

EXHIBIT 9

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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

QUINTON BROWN, RAMON)
ROANE, ALVIN SIMMONS,)
SHELDON SINGLETARY,)
GERALD WHITE, JASON GUY,)
AND JACOB RAVENELL,)
INDIVIDUALLY AND ON)
BEHALF OF THE CLASS THEY)
SEEK TO REPRESENT,)

PLAINTIFFS,)

VS.)

NUCOR CORPORATION AND)
NUCOR STEEL BERKELEY,)

DEFENDANTS.)

CASE NUMBER:

2:0422005-12

ORAL AND VIDEOTAPED DEPOSITION OF
MICHAEL R. BUCKLEY, PHD
NOVEMBER 22, 2006

ORAL AND VIDEOTAPED DEPOSITION OF MICHAEL R. BUCKLEY, PHD, produced as a witness at the instance of the Defendants, and duly sworn, was taken in the above-styled and numbered cause on the 22nd of November, 2006, from 8:28 a.m. to 12:33 p.m., before Kevin J. Bruzewski, CSR in and for the State of Texas, reported by machine shorthand, at the law offices of Alaniz & Schraeder, 2500 City West Boulevard, Suite 1000, Houston, Texas, pursuant to the Federal Rules of Civil Procedure and the provisions stated on the record or attached hereto.

NMA
Compressed
Transcript

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<p>1 APPEARANCES</p> <p>2</p> <p>3 FOR THE PLAINTIFFS:</p> <p>4 MR. ROBERT L. WIGGINS, JR.</p> <p>5 Wiggins, Childs, Quinn & Pantuzis, PC</p> <p>6 1400 Southtrust Tower</p> <p>7 Birmingham, Alabama 35203</p> <p>8</p> <p>9 FOR THE DEFENDANTS NUCOR CORPORATION AND NUCOR STEEL</p> <p>10 BERKELEY:</p> <p>11 MR. CARY A. FARRIS</p> <p>12 MR. MARC R. PATTON</p> <p>13 MR. MARK LINCOLN</p> <p>14 Alaniz and Schneder, LLP</p> <p>15 2500 City West Boulevard, Suite 1000</p> <p>16 Houston, Texas 77042</p> <p>17 (281) 833-2200</p> <p>18 ALSO PRESENT:</p> <p>19 Mr. R. Richard Jeanmeret</p> <p>20 Mr. Jerry Cook, Videographer</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 PROCEEDINGS</p> <p>2 VIDEOGRAPHER: Okay. Today's date is</p> <p>3 November 22, 2006. We're on the record at 8:28 a.m.</p> <p>4 COURT REPORTER: Stipulations for the</p> <p>5 record?</p> <p>6 MR. FARRIS: Federal Rules and South</p> <p>7 Carolina local rules?</p> <p>8 MR. WIGGINS: Yes.</p> <p>9</p> <p>10 *****</p> <p>11 MICHAEL R. BUCKLEY, PHD,</p> <p>12 a witness herein, called by the Defendant, having been</p> <p>13 first duly cautioned and sworn, as hereinafter</p> <p>14 certified, was examined and testified as follows;</p> <p>15</p> <p>16 EXAMINATION</p> <p>17 BY MR. FARRIS:</p> <p>18 Q. Good morning, Dr. Buckley.</p> <p>19 A. Morning.</p> <p>20 Q. I'm Cary Farris. I'll be taking your</p> <p>21 deposition today.</p> <p>22 A. Morning.</p> <p>23 Q. Would you state your full name for the record,</p> <p>24 please?</p> <p>25 A. Michael Ronald Buckley.</p>
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<p>1 INDEX</p> <p>2 PAGE</p> <p>3 Appearances..... 2</p> <p>4 Stipulations..... 4</p> <p>5 MICHAEL R. BUCKLEY, PHD</p> <p>6 Examination by Mr. Farris..... 4</p> <p>7</p> <p>8 Signature and Changes..... 178</p> <p>9 Reporter's Certificate..... 179</p> <p>10</p> <p>11 EXHIBITS</p> <p>12 NO. DESCRIPTION PAGE</p> <p>13 1 A copy of Amended Notice of Videotape 5</p> <p>14 Deposition for Possible Use at Trial to</p> <p>15 Michael R. Buckley, PHD</p> <p>16 2 A copy of contents of folder 11</p> <p>17</p> <p>18 3 A copy of Preliminary Expert Report of 20</p> <p>19 Michael R. Buckley</p> <p>20 4 A copy of a Nucor job posting 82</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 Q. Okay. Great. And did you receive a subpoena</p> <p>2 for your deposition today?</p> <p>3 A. I sure did.</p> <p>4 Q. Okay.</p> <p>5 A. Yes.</p> <p>6 Q. I'm going to show you this and ask you if</p> <p>7 that's the subpoena you received and the notice?</p> <p>8 A. That is.</p> <p>9 MR. FARRIS: Okay. Could we get that</p> <p>10 marked, please?</p> <p>11 MR. WIGGINS: We want to note -- well, go</p> <p>12 ahead.</p> <p>13 (Exhibit No. 1 marked.)</p> <p>14 MR. WIGGINS: We want to note for the</p> <p>15 record that we are making the same objections to the</p> <p>16 Defendant's subpoena as they made to the Plaintiffs'</p> <p>17 subpoena on the same types of items.</p> <p>18 MR. FARRIS: On the reports, past reports</p> <p>19 transcripts --</p> <p>20 MR. WIGGINS: Right. Right.</p> <p>21 MR. FARRIS: -- that kind of thing?</p> <p>22 BY MR. FARRIS:</p> <p>23 Q. Okay. Let's go ahead and you can have that</p> <p>24 copy and --</p> <p>25 A. Thank you.</p>

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<p>1 Q. -- take a look at it. And let's see what you 2 brought with you today in response to the subpoena. 3 Did you bring any documents with you? 4 A. I brought a number of documents, just some 5 handwritten notes to myself, copies of some -- some of 6 the reports that have been done, my report, 7 Dr. Jeanneret's report, couple notes -- and notes to 8 myself. 9 Q. Okay. So the handwritten notes are things that 10 you used in preparing your report? 11 A. They are. 12 Q. Okay. And did you not produce them with your 13 report; right? 14 A. I did not. 15 Q. Okay. 16 A. Did not. 17 Q. So you're producing them today for the first 18 time? 19 A. Absolutely. 20 Q. Okay. 21 A. Yes. 22 Q. Why did you not produce them with your report? 23 A. These are -- these are items that I've used for 24 today, not that I've used for the report that I 25 produced. The report that I produced earlier for</p>	<p>1 depositions and -- 2 Q. Which depositions? 3 A. The deposition that I read in preparation for 4 my first report. 5 Q. The ones you listed in your -- 6 A. That's right. 7 Q. -- report? 8 A. That's right. 9 Q. Okay. So everything else you've -- 10 A. I have. 11 Q. -- brought with you? 12 A. I have. 13 Q. Okay. Second item was any and all 14 correspondence and documents you have provided to 15 plaintiffs or plaintiffs' counsel. 16 A. I believe so. 17 Q. Have you brought any correspondence? 18 A. Just -- there have just been emails about 19 travel times and those kind of things. 20 Q. Okay. And that -- 21 A. And I have not brought a copy of those. 22 Q. Okay. Do you have a copy available of those? 23 A. I will have -- if you would like one, I would 24 certainly be glad to send you one. 25 Q. Okay. And you said that all of these are</p>
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<p>1 you-all is just what it is, it's the report. I sat down 2 and I wrote the report, and you have a copy of that. 3 Q. So none of the items that you brought today 4 were used in drafting your report? 5 A. I don't think so. I don't think so. Not in 6 drafting my first report. 7 Q. Okay. When you say your first report, what do 8 you -- 9 A. My preliminary report, the report you have a 10 copy of. 11 Q. Do you plan on filing a second report? 12 A. If asked I shall. 13 Q. Okay. But you haven't started drafting one 14 yet? 15 A. I have not. 16 Q. Okay. Let's just go through this subpoena list 17 real quick -- 18 A. Yeah. 19 Q. -- and make sure that we have everything 20 covered. We asked first for a complete copy of your 21 file including any documents basically that you have in 22 your file pertaining to this lawsuit. 23 Did you bring all of that? 24 A. You know, on instructions of Mr. Wiggins, the 25 only thing -- the only thing I had other than that were</p>	<p>1 scheduling type issues? 2 A. Yes, absolutely, hotel, travel time, that 3 kind -- 4 Q. No other kinds of correspondence? 5 A. No. No. 6 Q. Okay. Number 3 was any and all correspondence 7 and documents provided to you by plaintiffs or 8 plaintiffs' counsel. 9 You brought anything that the lawyers have 10 provided to you? 11 A. I have. I have. 12 Q. And what have you brought in response to that? 13 A. Just -- again, just the -- I mean, you're more 14 than welcome to have a copy of anything. It's the 15 report from -- in fact, it's not from my attorney or 16 from the attorney, it's from -- it's Professor 17 Jeanneret's -- or Dr. Jeanneret's response to my initial 18 report. 19 Q. Okay. We're going to need to get this whole 20 thing marked -- 21 A. Yeah. 22 Q. -- as a bulk exhibit. 23 A. Great. 24 Q. Do you have a copy of it or do you need 25 somebody to --</p>

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<p>1 A. I'm -- I'm going to let you copy it, if that's 2 okay. 3 Q. Okay. Great. 4 MR. WIGGINS: Okay. We emailed the 5 compendium thing that you sent us night before last. 6 You can ask him, but I don't think it all came through 7 for him, but -- 8 THE WITNESS: Yeah. You know, some of it 9 was -- 10 MR. WIGGINS: When you emailed us, we 11 emailed -- 12 THE WITNESS: It all didn't come through, 13 some came through. And in addition, I was told there 14 would be more that was forthcoming and I didn't receive 15 it. I had to leave yesterday to come here. 16 MR. FARRIS: Well, we can -- we can talk 17 about that off the record -- 18 THE WITNESS: Yeah. 19 MR. FARRIS: -- and get that to you. 20 THE WITNESS: That's great. 21 MR. FARRIS: So can we go ahead and mark 22 this, then. Let's just -- that whole manila folder, 23 please. 24 THE WITNESS: Great. 25 MR. FARRIS: And we'll take a look at it on</p>	<p>1 Q. Okay. 2 A. I didn't do it over a number of different days. 3 It was done over a real compact period. 4 Q. Did you have a initial draft that you gave to 5 your attorneys to review? 6 A. You know, I sent a draft on a Friday when it 7 was due. I made one correction on it because there was 8 a typo in it and apparently -- apparently another one 9 and -- but that's it. 10 Q. Okay. The next item is No. 6, all documents in 11 your possession or control that plaintiffs or you will 12 rely upon in plaintiffs trial in this case or in your 13 testimony. 14 Are there any other documents out there 15 that you plan to use in your testimony in the future in 16 this case? 17 A. Just some standard items like the uniform 18 guidelines, but other than that, I -- 19 Q. Okay. Well, let's -- let's list the standard 20 items just to make sure we know exactly what it is. 21 You're going to have the uniform 22 guidelines? 23 A. Uh-huh. 24 Q. Any other standard items? 25 A. Gosh. You know, probably I'd -- I would look</p>
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<p>1 break. 2 THE WITNESS: Great. 3 (Exhibit No. 2 marked.) 4 BY MR. FARRIS: 5 Q. No. 4 was a complete copy of any and all 6 reports prepared by you or anyone on your behalf which 7 relate in any way to plaintiffs' allegations? 8 A. I haven't prepared a report for today. 9 Q. Okay. Just the -- 10 A. Just some written notes. 11 Q. You have some written notes for today -- 12 A. I do. 13 Q. -- but you don't have any -- 14 A. No. 15 Q. -- type written -- 16 A. No. 17 Q. -- items for today? 18 A. No, I do not. 19 Q. The next item was copies of any and all drafts 20 of reports that relate to this lawsuit? 21 A. No, I just did a -- you know, I just sat at my 22 desk and did it and you have a copy of it. 23 Q. Did you keep any initial drafts of the report? 24 A. I have the final draft. I have the finished 25 report and I just sat down and did it.</p>	<p>1 at some -- some information -- some more information 2 about job analysis. I went to Auburn University in 3 Alabama. I took a course from Junior Field who is a 4 well-known person in human resource selection. I would 5 more than likely reread major portions of his book and 6 probably bring those along. 7 Q. Okay. When you said other job analysis 8 information, are you just referring to text or are 9 you -- 10 A. Yes. It's just a textbook. 11 Q. Okay. 12 A. It's just a textbook. 13 Q. So there is no other information out there that 14 you plan to use related specifically to this case? 15 A. You know, there are some standards by SIOP 16 (phonetic) that I would look at. There are some 17 standards by -- some educational standards. Those are 18 just rather standard. 19 Q. What about things specific to this case, are 20 there any documents or -- 21 A. Oh, I will look at some journals. You know, 22 I'm a university professor. One of my responsibilities 23 is to read the journals and be current on those. I'll 24 read the current journals and see if there is anything 25 that pertains to the case.</p>

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<p style="text-align: right;">Page 14</p> <p>1 Q. Okay. But aside from journals and text and 2 things that are written by outside people, is there any 3 documents in this case that you still intend to rely 4 upon? 5 A. None that I anticipate, but again, that might 6 change. It's -- 7 Q. Okay. All right. The next item is No. 7, a 8 complete copy of all written or recorded statements 9 taken by you. 10 Any written or recorded statements? 11 A. No, none at all. 12 Q. Did you ever talk to the plaintiffs, the named 13 plaintiffs in this case? 14 A. I have not. Have not. 15 Q. Okay. The next item is copies of all 16 photographs taken by you or on your behalf? 17 A. Oh, I stay away from photographs. 18 Q. All right. So none there. 19 The next item is a complete copy of all 20 notes, records or journals or like or similar documents 21 made by you or someone on your behalf? 22 A. You know, just to -- in fact, I have some of 23 them here that I've been thinking of all along. It's 24 all -- it's all basically here, which you are more than 25 welcome to look at. It's kind of just some things</p>	<p style="text-align: right;">Page 16</p> <p>1 who is a researcher in Florida State University whom I 2 think has done some really good research on 3 interviewing, who I think is a really pretty good 4 source. 5 Q. Any specific journals that you would typically 6 would use? 7 A. The journals I typically use are -- they range 8 from the scholarly journals in management to the 9 practitioner journals in management. Like, for example, 10 I read on a regular basis Personnel Psychology. I've 11 written articles for publication in Personnel 12 Psychology, have published and rejournal of applied 13 psychology on a relatively frequent basis. A lot of it 14 has gotten a little bit far field from the things I'm 15 interested in. Academy Management Review, Academy 16 Management Journal, Public Personnel Management. I 17 mean, there's just a slew of things. 18 One of my -- one of my major tasks is I am 19 primarily a university professor is to keep up with the 20 current literature. I pride myself on doing that 21 quite -- 22 Q. Okay. The last item is any and all texts 23 referenced or materials reviewed in preparation of your 24 report and testimony in this case. Let's talk about the 25 text first.</p>
<p style="text-align: right;">Page 15</p> <p>1 that -- 2 Q. Okay. 3 A. -- that I've been through. 4 Q. All right. The name, address and telephone 5 number of each and every person whether employed by 6 Nucor Steel Berkeley or not who has been consulted in 7 any way to plaintiffs' allegations of discrimination or 8 otherwise has discoverable knowledge about same. 9 Did you consult with anyone? 10 A. I have not. 11 Q. Okay. The next item No. 11, any and all 12 additional documents not produced under the requests 13 above that relate in any way to your knowledge or 14 opinions relating to this lawsuit? 15 A. You know, there may be a journal article or 16 two, but nothing -- nothing that's not readily 17 available. 18 Q. Okay. Do you know specifically any journal 19 articles that you might rely upon? 20 A. That I might, no, but I anticipate that I will. 21 Q. Okay. But any authors or specific journals 22 that you would consult? 23 A. Well, there are -- you know, I look at some of 24 the folks who have done work in job analysis. I'm 25 especially fond of a young man named Chad Van Icking</p>	<p style="text-align: right;">Page 17</p> <p>1 Did you review any texts? 2 A. You know, I just looked at Junior Field. It's 3 called Gatewood and Field, Human Resource Selection -- 4 Human Resource Selection. 5 Q. Okay. 6 A. You know, again, as a student who attended 7 Auburn University, Junior was -- Dr. Field was one of my 8 professors. I respect him quite well. I think it's a 9 very -- a very good resource for anybody whose 10 interested in human resource selection processes. 11 Q. Is that the only text that you have reviewed in 12 drafting your report? 13 A. You know, I may have looked at another text or 14 two, but I don't notice. I don't remember. I don't 15 recall. I may have looked at Wayne Cascio, C-A-S-C-I-O. 16 It's called Applied Psychology and Personnel Management 17 published out of Reston, Virginia. Kind of another -- 18 another seminal reference that -- that I think we use in 19 the behavioral sciences. 20 Q. Okay. So the Gatewood and Field text and the 21 Cascio text are the only ones specifically -- 22 A. Yeah, the only ones I can recall. 23 Q. -- that you can recall? Okay. 24 A. I -- you know, again, I read a lot of textbooks 25 though, I must tell you. I teach principles in</p>

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<p>1 management and so I read textbooks on principles in 2 management. Some are good, some are not so good. I 3 tried to keep up with human resource management text 4 because human resource management is my primary area of 5 interest -- 6 Q. Okay. 7 A. -- so.... 8 Q. All right. Now, as to materials you reviewed 9 in preparation of your report, did you bring any of 10 those with you today? 11 A. Yeah. Just -- just what's -- just what's in 12 here which is -- which is Dr. Jeanneret's response to my 13 initial report. 14 Q. Okay. And in your -- in your report, you 15 stated that you look at a number of different 16 depositions and you said you have not brought those with 17 you today? 18 A. I have not brought those with me today. 19 Q. Okay. Any other materials that you have looked 20 at at all in preparing your report? 21 A. For preparing my report a couple weeks back? 22 Q. Correct. 23 A. Oh, gosh, not that I can recall. 24 Q. Okay. 25 A. Not that I can recall.</p>	<p>1 Defense 3, I guess. 2 (Exhibit No. 3 marked.) 3 BY MR. FARRIS: 4 Q. And let's go to Page 22. That's actually the 5 last page of your CV. 6 A. You know, and I don't have that with me, but I 7 certainly can recall. I certainly can recall. 8 Q. You can look at that. 9 A. Okay, great. Thank you. 10 Q. Sure. All right. You'll see there that you 11 have listed several items under consulting and 12 management development? 13 A. Uh-huh. 14 Q. The first thing there that you listed is expert 15 witness in gender discrimination case and then you list 16 some dates after that; is that correct? 17 A. Absolutely, yes. 18 Q. And you did not list any specific names of 19 cases there? 20 A. You know, what I'm asked to do on a regular 21 basis, I guess, is to consider some depositions and what 22 -- what my expert opinion is regarding those 23 depositions, and that's what this is in response -- 24 that's what this represents. 25 Like, for example, the last one -- and</p>
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<p>1 Q. All right. We can move on past that then. 2 A. But I must tell you, I look at a lot of things. 3 I mean, it's not -- you know, I mean, you try to look at 4 things that are for a lot of things. I mean, I -- I 5 hate to think I provided you an exhaustive list because 6 I may not have, but there are things that I read in 7 preparation for my duties as a college professor that 8 may have been applicable, too. 9 For example, the Van Ickling reference that 10 I read is about panel interviewing. And I read that not 11 in preparation for this, but in preparation for a paper 12 that I have under review at Personnel Psychology that 13 I've just submitted a little while ago. 14 Q. Okay. I understand that you may have reviewed 15 some other academic type materials. 16 What about specific materials in this case, 17 any other depositions or documents? 18 A. None that I can recall, no. 19 Q. Okay. Let's go ahead and introduce your report 20 as an exhibit here. Do you have a copy of it here with 21 you -- 22 A. I sure do. 23 Q. -- or do you need a copy? 24 A. No, I have a copy. Thank you. 25 MR. FARRIS: Okay. Let's introduce that as</p>	<p>1 there is -- there's really never get so far where 2 there's a name for the case. The last thing I looked at 3 in terms of gender discrimination was a situation in 4 Oklahoma City which was alleged to be sexual harassment. 5 And I read those depositions and reported to the 6 attorneys. Nathan Walcy is the young man's name. I 7 reported to him that I believe that there was some 8 pretty compelling evidence that the environment had had 9 a number of sexual harassment issues associated with 10 them. 11 Q. How did you determine you -- that there were 12 these significant issues? 13 A. They came and talked to me and explained to me 14 what the situation was like. I read some of the 15 complaints that were -- that were made by the 16 plaintiffs. And what I told the attorney was that I -- 17 well, interestingly, what the attorney said he would 18 like me to consider as an expert is if I would -- the 19 situation as they describe it is in which one it wasn't 20 -- it's kind of a Bay situation where profanity, where 21 off-color jokes, et cetera, were part of the status quo. 22 And what he wanted to see if I would be able to say is 23 that because of the situation, because of the behavior 24 of those in the situation that that would minimize any 25 kind of problems that they had with sexual harassment.</p>

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1 And I said I don't think that's something I feel
2 comfortable saying.
3 He wanted to say that, you know, we're in a
4 coarse society so perhaps the level of discourse has
5 been ratcheted downward and I just said I don't think
6 that's something I would be comfortable talking about.
7 Q. Okay. Are you aware that the Federal Rules of
8 Civil Procedure require you to list specific case names
9 in which you've either testified or been deposed in the
10 preceding four years before this case?
11 A. Yeah, I am not aware nor have I testified nor
12 have I been deposed in the last four years.
13 Q. Okay. All right. Well, let's go through this
14 list then --
15 A. Sure. Gosh.
16 Q. -- and see what exactly you have done. In the
17 racial discrimination cases, you list 2004, 2003, 2002?
18 A. Uh-huh.
19 Q. Those would have been in the last four years --
20 A. They were.
21 Q. -- but he did not give any testimony?
22 A. Did not give a deposition. In fact, I believe
23 in one of them I wrote -- I've written a report.
24 Q. Do you remember which one it was?
25 A. It was for the Great Plains Coca-Cola Bottling

1 wanted punitive damages. And what my -- what I -- the
2 idea what I wrote about was that basically, you know,
3 the organization as soon as they found out about it
4 tried to engage in remedial action, tried to make him
5 whole, he just didn't allow it to happen.
6 Q. So you wrote a report for the defendants in
7 that case?
8 A. I think I wrote a report for the defendants,
9 that's right.
10 Q. Okay.
11 A. It was the Great Plains Coca-Cola Bottling
12 Company.
13 Q. That was in 2002. What --
14 A. I believe so.
15 Q. The one you have listed, you have 2004 listed.
16 Do you recall what you did in --
17 A. You know, to tell you the truth, I don't recall
18 right offhand.
19 Q. What about 2003?
20 A. 2003, it was a similar type of racial
21 discrimination case which racial -- racial terms were
22 used. And it's my opinion that when that happens,
23 damage is done. Now, what the -- the amount of the
24 damages is something for someone else to determine.
25 Q. Okay. Then was that the only one that you did

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1 Company -- oh, gosh, maybe in 2002. I'm just not -- I'm
2 just not sure. I don't keep a lot of this stuff. I
3 don't -- if you saw my office, you would perhaps
4 understand why. I just don't keep a lot of this stuff
5 unless it went any further.
6 Q. So you did a report in that case and you think
7 it was in 2002?
8 A. Yeah. I did a report for the attorney. And
9 basically the report -- the report based on a number of
10 complaints and I think I read some depositions, was that
11 some racial discrimination had occurred. And again,
12 what this attorney said, well, the relationship between
13 the plaintiff and the defendant, does that -- does that
14 make any difference. Well, I said, I don't feel
15 comfortable talking about that question. It's somebody
16 that needs -- is much more familiar with the situation
17 needs to determine that.
18 But what I have basically -- what happened
19 was, the individual made a sexual discrimination
20 complaint -- I'm sorry, a racial discrimination
21 complaint, reported to the organization. The
22 organization then tried to engage in some remedial
23 activity to take care of the issue, but he came in on a
24 -- he came in on a Monday and before they got a chance
25 to try to rectify the situation, he quit claiming he

1 in 2003?
2 A. That was. That was.
3 Q. And in 2002 the only one you did was the Great
4 Plains?
5 A. That's right. That's right.
6 Q. What about '99, do you recall that one?
7 A. Do not. Do not.
8 Q. Okay. Do you remember if it was more than one
9 case or was it --
10 A. You know, typically for me I don't do a lot.
11 Most of these would represent just one case.
12 Q. Okay. 1997?
13 A. You know, just don't remember.
14 Q. Okay. Any -- do you remember any of these
15 other ones, '91 through '95?
16 A. You know, it's interesting. We -- behavioral
17 science researchers talk of something called Zygarnic
18 effect. And Zygarnic effect basically says as soon as
19 we no longer have a need for information, we're
20 motivated to forget it. I remember a lot of the things
21 I've done that were referred to the research I've done,
22 but these are not things that I keep copies of nor do I
23 probably keep in my short-term memory.
24 Q. Okay. Well, these ones that you don't recall,
25 you may recall a little bit about them, do you remember

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<p>1 what percentage of them you did for the defense and what 2 percentage for the plaintiffs? 3 A. You know -- you know, I don't. I don't really 4 remember. And -- but my policy is frankly that when I 5 give an opinion on these, I don't -- I testify on no 6 one's behalf. I mean, what I'm doing is testifying to 7 what I believe to the best of my knowledge and 8 information that I have, the facts in the case so.... 9 Q. How do people approach you to take those 10 assignments? 11 A. I'll just -- I'll get a call or, you know, I 12 know some -- there are some lawyers that I know they'll 13 -- you know, what do you do, I do this. And just as a 14 professional you normally get some. 15 Q. Were any of these cases for Wiggins Childs or 16 for Mr. Wiggins? 17 A. No, no, no. 18 Q. Okay. 19 A. I never met Mr. Wiggins until this morning. 20 Q. Okay. Have you ever testified or been deposed 21 as an expert witness? 22 A. I have testified. I've never been deposed. 23 I've testified in court in Tulsa -- Tulsa, Oklahoma. 24 Q. Okay. When was that? 25 A. Oh, my. It's -- it's quite a number of years</p>	<p>1 A. No. His claim was -- I'm trying -- I'm trying 2 to remember why the case was brought. There was some 3 prima facie evidence, I just don't remember what it was. 4 And I think -- I think, if I recall, it was the 5 distribution -- the age distributions that the -- that 6 the distribution of the age -- the age of the -- the 7 average age in the company had gone from 40 plus to well 8 under 40. 9 Q. Okay. So you've never testified or given a 10 deposition in a race discrimination case? 11 A. Have not. 12 Q. Okay. And you've never been deposed prior to 13 today? 14 A. Have not prior to today. 15 Q. Okay. That one case in which you have 16 testified as an expert witness, were you qualified as an 17 expert witness in that case? 18 A. I sure do believe so. I'm quite familiar with 19 the Age Discrimination and Employment Act and the 20 litigation surrounding age discrimination. 21 Q. Okay. And I guess I phrased my question wrong. 22 A. That's okay. 23 Q. What I meant was did the Court qualify you as 24 an expert witness in that case? 25 A. God. That's a -- I don't know.</p>
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<p>1 back. I can't remember the exact year. 2 Q. Do you recall what kind of case it was? 3 A. I do. It was an age discrimination case. 4 Q. Age discrimination? 5 A. Age discrimination, yes. 6 Q. Were you testifying for the plaintiffs or the 7 defendants? 8 A. I was testifying to the facts, but I was -- I 9 was hired by the defendants -- defendant's attorneys. 10 Q. Was it a state law case or a federal? 11 A. Federal law. 12 Q. It was federal? 13 A. Title 7 case. 14 Q. And in that Title 7 case, do you recall if it 15 was allegations of intentional discrimination? 16 A. Well, it was -- yes, it was, in fact. The -- 17 the plaintiff in the case was a 41 year old white male 18 who -- he tried to demonstrate through the use of 19 statistics that there were a -- that the age 20 distribution had changed in the organization. He then 21 -- he then -- he got some performance appraisals that 22 weren't very good, they kind of went down. He was then 23 terminated. He claimed it was based on his age. 24 Q. So did he make some adverse impact claims in 25 that case?</p>	<p>1 Q. Okay. 2 A. I don't know. 3 Q. Did you -- did you file an expert witness 4 report? 5 A. I did not. All I did was went and -- went to 6 Tulsa one morning and testified in court. 7 Q. Do you recall if the defense attorneys 8 designated you as an expert witness in that case? 9 A. I believe they may have. I'm just not sure. I 10 just don't recall. 11 Q. Do you recall if there was any kind of argument 12 over whether you -- 13 A. Oh, absolutely. 14 Q. -- were qualified to -- 15 A. Absolutely there was. 16 Q. -- serve as an expert? 17 A. As soon as I -- as soon as I was called and sat 18 down, the defense attorneys made an objection. 19 Q. Okay. 20 A. And what that was -- what it was, I don't 21 recall. I just sat there rather patiently until -- 22 Q. Okay. 23 A. -- it was determined what the next step would 24 be. 25 Q. In that case, did the -- was there any</p>

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1 disqualification of you as an expert?
 2 A. No, there was not.
 3 Q. Okay.
 4 A. I was allowed to give testimony.
 5 Q. Okay. And so all you did was just that one
 6 day's testimony?
 7 A. That's right.
 8 Q. Did you conduct any kind of analysis in that
 9 case?
 10 A. You know, I did, in fact. I looked at -- I
 11 looked at the age distributions. And if you're familiar
 12 with the law, at least my reading of the law, indicates
 13 to me that in age discrimination cases, it's really
 14 difficult to bring -- to show a prima facie case based
 15 on the age of the work force.
 16 And what happened with this organization --
 17 it was a bank -- it was a credit union in Bartlesville,
 18 Oklahoma. And what they did is they have -- they just
 19 started a new credit card processing -- a credit card
 20 processing part when credit -- this is before credit
 21 cards, I guess, became real lucrative.
 22 So what they did is they hired a lot of
 23 people to do that. Well, who do you typically hire when
 24 you hire people to -- for entry level jobs? Well,
 25 typically you hire people who are quite a lot lower than

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1 -- for you. You don't hire executive vice presidents to
 2 run the credit card. And that was my -- was basically a
 3 part of my -- my testimony was basically that I didn't
 4 think the age discrimination -- the age distributions
 5 were supportive of that claim, and also, what I looked
 6 at were reasonable -- were there reasonable factors
 7 other than age on which this human resource decision was
 8 made. And in my judgment, there was. There was some
 9 performance evaluation data that had shown that this
 10 individual's performance had -- had been evaluated, not
 11 -- decreased -- he just wasn't doing very well and had
 12 been counseled. And I was asked as well because one of
 13 the -- one of the areas I do claim some expertise in is
 14 performance evaluation. My master's thesis is consumer
 15 performance evaluations and the legality of issues
 16 concerning performance evaluation.
 17 I also basically looked at their
 18 performance evaluation form, I remember. It wasn't a
 19 very good form, I didn't think, but -- and I can't
 20 recall why, but I think that they did a good job
 21 communicating to the individual the -- the fact that his
 22 performance wasn't nearly as good as it should have been
 23 and some remedial actions he should have taken.
 24 Q. Okay.
 25 A. So....

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1 Q. Have you ever testified regarding a validation
 2 study?
 3 A. Have not.
 4 Q. Have you ever testified regarding adverse
 5 impact in a case?
 6 A. Have not. Have not.
 7 Q. Okay. Have you ever testified about the job
 8 relatedness of a company's --
 9 A. Have not had to.
 10 Q. -- procedures?
 11 A. Have not had to.
 12 Q. Okay. And you said that this is the first case
 13 you've ever worked on for Mr. Wiggins?
 14 A. It sure is, yes, sir.
 15 Q. Okay. What percentage of your income comes
 16 from your work as a consultant or as an expert witness?
 17 A. A relatively small percentage. I feel
 18 uncomfortable talking about salaries, but my university
 19 salary is --
 20 MR. WIGGINS: It's up to you.
 21 BY MR. FARRIS:
 22 Q. Yeah. I don't need to know --
 23 A. That's okay.
 24 Q. I don't need to know your exact salary. Just a
 25 guess was --

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1 A. My university salary is about a \$197,000 a year
 2 as the JC Penney endowed chair. My outside consulting
 3 is -- typically ranges between 8 and \$10,000.
 4 Q. Okay. And that's per year?
 5 A. That's right. That's right.
 6 Q. Okay.
 7 A. You know, some more, some less.
 8 Q. Okay.
 9 A. Some more, some less.
 10 Q. And how were you approached in this case about
 11 acting as an expert witness.
 12 A. I was contacted by -- by Ben DeGweck. A good
 13 friend of mine -- John Veres is a good friend of mine.
 14 I went to school with John at Auburn University. So
 15 John suggested that I would be a person who might be
 16 qualified to look at these issues.
 17 Q. Did John Veres contact you about acting as an
 18 expert in this case?
 19 A. No, he didn't contact me. He said he had given
 20 my name to Wiggins and Childs, I believe is the name of
 21 y'all's law firm. Yeah.
 22 Q. Okay.
 23 A. John didn't make any arrangements for me. John
 24 didn't make any arrangements for me. He just gave the
 25 attorneys my name.

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<p>1 Q. Did you talk to John Veres about this case?</p> <p>2 A. You know, a little bit; more in general. You</p> <p>3 know, John and I are college -- are university chums.</p> <p>4 We talk about many different things, families, what do</p> <p>5 you think about this, you know -- you know, if I have a</p> <p>6 human resource issue.</p> <p>7 John had a human resource issue at work</p> <p>8 recently about a termination he needed to make. He</p> <p>9 called me about it. I said, here's what I think you</p> <p>10 need to do and --</p> <p>11 Q. Okay.</p> <p>12 A. -- those kind of issues.</p> <p>13 Q. What did you discuss specifically about this</p> <p>14 case with Mr. Veres?</p> <p>15 A. He just told me that he had done some work for</p> <p>16 them in the past, that they were, you know, an honest</p> <p>17 and upright group and that if I was interested, they</p> <p>18 would be in touch with me.</p> <p>19 Q. Okay. And then Ben DeGweck contacted you?</p> <p>20 A. Yeah. Ben DeGweck, I think, was the person who</p> <p>21 sent me some -- sent me some -- sent me the initial slew</p> <p>22 of depositions.</p> <p>23 Q. Okay. And that's what you received initially</p> <p>24 is the depositions?</p> <p>25 A. That's what I received and yes. Yes.</p>	<p>1 experience working in a steel plant.</p> <p>2 Q. Okay.</p> <p>3 A. So it would be difficult. It would be</p> <p>4 difficult for me.</p> <p>5 Q. Do you know the names of the defendants?</p> <p>6 A. Oh, gosh. Hot mill -- just a number of them</p> <p>7 that I -- I can remember offhand. Not many that I have</p> <p>8 committed to memory.</p> <p>9 Q. Okay. Are you familiar with the different jobs</p> <p>10 that are at issue in each of the different departments?</p> <p>11 A. A little bit. A little bit familiar with the</p> <p>12 jobs.</p> <p>13 Q. Okay.</p> <p>14 A. A little bit familiar with the jobs.</p> <p>15 Q. Okay. When you say a little bit, what do you</p> <p>16 mean there?</p> <p>17 A. Somewhat. I mean, I've read through some of</p> <p>18 the -- some of the information that's been given</p> <p>19 especially that on Dr. Jeanneret's rebuttal to my -- to</p> <p>20 my report.</p> <p>21 Q. Okay. So just say --</p> <p>22 A. But I don't consider myself an expert on these</p> <p>23 -- you know, on the differences between these positions.</p> <p>24 I don't believe that's what -- why I've been asked to</p> <p>25 comment.</p>
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<p>1 Q. Did you ever receive any other documents from</p> <p>2 Wiggins Childs?</p> <p>3 A. God, not that I can recall. Just those</p> <p>4 depositions.</p> <p>5 Q. Did you ever --</p> <p>6 A. Just a series of depositions.</p> <p>7 Q. I'm sorry.</p> <p>8 Did you ever ask for any other documents</p> <p>9 from them?</p> <p>10 A. I did not. I did not.</p> <p>11 Q. Okay.</p> <p>12 A. I did not.</p> <p>13 Q. All right. Let's talk about Nucor Berkeley --</p> <p>14 A. Yes, please.</p> <p>15 Q. -- the defendant in this case.</p> <p>16 A. Sure.</p> <p>17 Q. Are you aware about the different departments</p> <p>18 at Nucor Berkeley?</p> <p>19 A. You know, somewhat. I wouldn't consider myself</p> <p>20 anywhere near an expert on that as, for example,</p> <p>21 Dr. Jeanneret is. I --</p> <p>22 Q. So are you familiar with what each department</p> <p>23 does? For instance, what they manufacture?</p> <p>24 A. It would be difficult for me to go through each</p> <p>25 one and tell how different they are. I have no</p>	<p>1 Q. Okay. Are you familiar at all with the duties</p> <p>2 of the various jobs in the different departments?</p> <p>3 A. You know, some. Some, but again, I think that</p> <p>4 I've not seen a lot of job related -- a lot of</p> <p>5 information about these jobs. I've not been privy to a</p> <p>6 lot of that information. Not a lot of that information</p> <p>7 has been provided for me by -- by the defendant.</p> <p>8 Q. And what about by Mr. Wiggins, did he provide</p> <p>9 anything?</p> <p>10 A. No. No.</p> <p>11 Q. Okay. Did you ask for any of that stuff?</p> <p>12 A. You know, I think I may have a little bit later</p> <p>13 said, you know, this is information that we should have</p> <p>14 gotten. Its -- I believe there is an affirmative</p> <p>15 obligation on the part of the defendant according to the</p> <p>16 uniform guidelines to present this information.</p> <p>17 Q. If some of this information had been available,</p> <p>18 would you have reviewed it?</p> <p>19 A. I would -- I would in -- if a -- if a job</p> <p>20 analysis -- if information is provided, I certainly feel</p> <p>21 competent and qualified to make -- to develop an opinion</p> <p>22 whether it's a guidelines complaint -- whether it's</p> <p>23 guidelines complaint work.</p> <p>24 Q. Okay. Are you familiar with the promotions</p> <p>25 process in the different departments?</p>

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<p>1 A. Somewhat, just from what I read in the 2 depositions. 3 Q. Okay. Well, let's just take an example. Like 4 would you have specific enough knowledge to say how the 5 beam mill, for example, does promotions? 6 A. Well, as I think I may have said in my report, 7 a lot of what I looked at were based on the depositions. 8 You know, a lot of what I saw used were a number of 9 subjective -- a lot of subjective factors that were 10 combined in a fairly subjective fashion. 11 You know, I saw some of the -- I believe 12 it's on one of my -- it's in here. And I wish I had a 13 page number. I didn't page number these. But the 14 number of the different subset criteria, the number of 15 items missed on a written higher evaluation -- you want 16 me to read through these? 17 Q. Well, no. No. Actually, I just want to kind 18 of get an idea -- 19 A. Yeah. 20 Q. -- what your knowledge about the -- 21 A. Great. 22 Q. -- specific promotions processes. 23 And so do you know how they would do 24 promotions in the beam mill? 25 A. I think that from the information that I've</p>	<p>1 that are good. But again, they are put together without 2 any kind of -- any kind of methodology, any kind of 3 criteria suggested by the company. 4 In the behavioral sciences, what we call 5 those are implicit personality theories. In the absence 6 of information, people are asked to use their own 7 judgment. And we all have a different idea about what 8 constitutes good and bad behavior. 9 Q. Okay. Well, just as far as the subjective 10 factors, though, could you name a few specific examples? 11 A. Yeah. I mean, I think I could -- you know -- 12 you know, one was a gut feeling that one talked about 13 which really stuck me as kind of -- kind of unusual. 14 Q. Okay. Any others? 15 A. Gut feeling. 16 Just, you know, we pick the best person. 17 We -- you know, based on how we feel about them. There 18 are things that I think I read a number of times in the 19 depositions. 20 Q. Do you think that picking the best person for 21 the job is an improper means for choosing someone? 22 A. Oh, absolutely not. Picking the best person 23 for the job is the -- is the optimum way provided one 24 uses job related criteria. 25 Q. You mentioned that there were some objective</p>
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<p>1 read, I'm not sure that -- well, from the information 2 that I've read, I wouldn't be able to stand -- to sit 3 here and tell you what they do. 4 Q. Okay. 5 A. Tell you exactly what they do or go through the 6 step by step process. 7 Q. Okay. Could you name some of the specific jobs 8 at issue in this case? 9 A. Just the beam mill, hot mill. Again, I must -- 10 you know, I've not been privy to a lot of the 11 information that -- 12 Q. Okay. Well, those are the departments. 13 A. Yeah. 14 Q. Do you know the names of any of the specific 15 jobs? 16 A. Do not. Do not. 17 Q. Okay. You spoke about some subjective 18 factors -- 19 A. Absolutely. 20 Q. -- that you looked at. Could you explain what 21 some of those subjective factors were? 22 A. Yeah. You know, I think the issue is that 23 there are subjective factors that are put together in a 24 relatively subjective fashion. I mean, there are some 25 factors that are objective and I think those are ones</p>	<p>1 factors used. 2 Could you give some examples of those? 3 A. Yeah. I think there were safety records, work 4 attendance, those kinds of things. 5 Q. So then you're essentially testifying that it's 6 a combination of both objective and subjective factors? 7 A. Well, I think that that's probably a case that 8 could be made, I think. But my issue is more in the 9 subjectivity and the combination of the data. 10 Q. Okay. How did you acquire your knowledge about 11 the selection procedures used? 12 A. Basically on the depositions that I've read. 13 Q. Okay. And those that are listed specifically? 14 A. Those that are listed specifically, yeah. 15 Q. Let's add -- let's go to that list real quick 16 in your report and make sure we have all of those. It's 17 on -- as you said, your report is not page numbered. 18 A. Sorry. Sorry. 19 Q. That's all right. It's on Page 4. 20 A. Okay. 21 Q. Okay. And on this list, your source documents, 22 you said that you looked at the complaint? 23 A. Uh-huh. 24 Q. Right? 25 A. Absolutely.</p>

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<p>1 Q. And then you looked at the employee handbook?</p> <p>2 A. I did.</p> <p>3 Q. And you looked at the deposition of Ladd Hall?</p> <p>4 A. I did.</p> <p>5 Q. Paul Ferguson?</p> <p>6 A. I did.</p> <p>7 Q. Al Smith?</p> <p>8 A. Uh-huh.</p> <p>9 Q. John Bell?</p> <p>10 A. Uh-huh.</p> <p>11 Q. William Roberson?</p> <p>12 A. (Witness nods.)</p> <p>13 Q. Meleah Barnhill?</p> <p>14 A. Uh-huh.</p> <p>15 Q. And Dave Sumoski?</p> <p>16 A. I have.</p> <p>17 Q. Who is Ladd Hall?</p> <p>18 A. I believe he's the -- I believe he's the CEO.</p> <p>19 Q. Okay. And what about Paul Ferguson, do you</p> <p>20 know what his position is?</p> <p>21 A. You know, these were just a series of managers</p> <p>22 in different areas of Nucor. Now, as for being able to</p> <p>23 say who was what, I don't know. I do remember Meleah</p> <p>24 Barnhill appeared to me to be a -- the -- one of the</p> <p>25 chief people in the human resources area.</p>	<p>1 Again, a lot of what I got was some</p> <p>2 interpersonal issues that were involved that -- but it's</p> <p>3 always hard to put a finger on those. I think that it</p> <p>4 was just not very well defined in the depositions what</p> <p>5 the selection program was.</p> <p>6 Q. Okay. So you're not saying that the gut</p> <p>7 feeling was the only thing that was used in that --</p> <p>8 A. Oh, no. It wasn't the only one, but it</p> <p>9 certainly is something that needs to not be in the</p> <p>10 selection process.</p> <p>11 Q. Okay. Since we're talking about the gut</p> <p>12 feeling issue in the beam mill, did you analyze how the</p> <p>13 beam mill does promotions versus what factors the hot</p> <p>14 mill, for instance, looks at it?</p> <p>15 A. Did not. Did not.</p> <p>16 Q. Okay. All right. Anything else besides these</p> <p>17 items that we've named off here that you looked at?</p> <p>18 A. No, I don't believe so. I don't believe so.</p> <p>19 Q. Okay. Do you know what specific jobs at the</p> <p>20 mill are considered to be entry level positions?</p> <p>21 A. No. No, I don't think I could name those.</p> <p>22 Q. And do you know the difference between</p> <p>23 production bonus jobs and ROA bonus jobs?</p> <p>24 A. They are, I believe, the difference between</p> <p>25 entry level jobs and management jobs. Production --</p>
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<p>1 Q. Okay. What about William Roberson, do you</p> <p>2 know?</p> <p>3 A. You know, I just don't remember offhand.</p> <p>4 Again, these were again, I believe, managers of -- in</p> <p>5 the company.</p> <p>6 Q. Okay. Let's go back to your -- the gut feeling</p> <p>7 issue you said that was a subjective --</p> <p>8 A. Sure is. Sure is.</p> <p>9 Q. -- issue.</p> <p>10 Do you recall what department that was in?</p> <p>11 A. I do not, but I think it was made by -- you</p> <p>12 know, in fact, instead of me having to think, I'll read</p> <p>13 back. I believe it was in the Ferguson deposition.</p> <p>14 Q. Okay.</p> <p>15 A. And I'm not sure what department it was in.</p> <p>16 Q. Do you recall seeing that in any other</p> <p>17 departments?</p> <p>18 A. No. I don't believe -- I don't believe I saw</p> <p>19 that specific wording used.</p> <p>20 Q. Do you recall what other factors were used</p> <p>21 aside from the allegedly gut feeling used in --</p> <p>22 A. Yeah.</p> <p>23 Q. -- the --</p> <p>24 A. Safety records, et cetera. How -- you know,</p> <p>25 basically through your talks with people.</p>	<p>1 jobs that have been a production basis versus jobs that</p> <p>2 get paid based on what return on assets has been over</p> <p>3 the course of a year.</p> <p>4 Q. Okay. So it's your understanding it's either</p> <p>5 -- management versus production?</p> <p>6 A. Right. Right.</p> <p>7 Q. And management would be the production bonus or</p> <p>8 the ROA bonus?</p> <p>9 A. It would be the ROA bonus, I believe.</p> <p>10 Q. Okay. Did you conduct any kind of scientific</p> <p>11 study in this case to support your contentions?</p> <p>12 A. No. But I've given the whole issue of</p> <p>13 subjectivity a lot of thought. I think that there is --</p> <p>14 at least what I see is a lot of subjectivity involved in</p> <p>15 the process.</p> <p>16 You know, it's interesting is I was -- I</p> <p>17 was reading the guidelines the last time -- and I'll</p> <p>18 certainly give you a copy of this. This is from --</p> <p>19 excuse me. It's 14B2 in the guidelines.</p> <p>20 It says in view of possibility of bias and</p> <p>21 subjective evaluations, supervisory ratings themselves</p> <p>22 instructions to raters --</p> <p>23 COURT REPORTER: Wait. Wait. Wait.</p> <p>24 THE WITNESS: Oh, I'm sorry. I'm reading</p> <p>25 too fast.</p>

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<p>1 COURT REPORTER: Slow it down.</p> <p>2 THE WITNESS: I'm speaking in Northern.</p> <p>3 I'm sorry.</p> <p>4 A. In view of the -- in view of the possibility of</p> <p>5 bias and subjective evaluations, supervisory rating</p> <p>6 techniques and instructions to raters should be</p> <p>7 carefully developed.</p> <p>8 You know, and I've given a lot of thought</p> <p>9 to the whole issue of subjectivity in the hiring</p> <p>10 process. There's a -- there's a wonderful person named</p> <p>11 Fisk at the University of -- University of Massachusetts</p> <p>12 - Amherst who has done a lot of research on</p> <p>13 subjectivity. And typically what happens basically in</p> <p>14 situations where people are -- are having to make a lot</p> <p>15 of subjective judgments, the -- she says basically that</p> <p>16 in the early stages of the decision making many of the</p> <p>17 decisions we make are automatic. They are not things</p> <p>18 that we have a lot of -- you know, volitional control</p> <p>19 over.</p> <p>20 A good example. She's made a wonderful</p> <p>21 statement. She says typically we're not in a position</p> <p>22 to assert what we don't consider when we're hiring</p> <p>23 people. We're only in a position to basically talk</p> <p>24 about what we do consider.</p> <p>25 Q. How does that apply specifically to, say, way</p>	<p>1 further information.</p> <p>2 Q. Okay. But with the report that you have right</p> <p>3 now that you're --</p> <p>4 A. Oh, I believe that's it's not -- it's not a</p> <p>5 valid procedure, no.</p> <p>6 Q. Okay. Let's talk about that then. What --</p> <p>7 what are you basing your opinion on that it's not a</p> <p>8 valid procedure?</p> <p>9 A. Basically that there was not a lot of</p> <p>10 information presented about the jobs, the job analysis,</p> <p>11 the procedure that was used, the criteria against which</p> <p>12 things were validated.</p> <p>13 I think a good quote -- I heard someone</p> <p>14 make this quote, and I wish I could remember who. But</p> <p>15 he said we're -- basically as behavioral scientists,</p> <p>16 we're all figurative residents of the State of</p> <p>17 Missouri -- show me. Show me.</p> <p>18 Q. All right.</p> <p>19 A. In fact, even the guidelines talk about how --</p> <p>20 you know, the data -- this is the data that's necessary.</p> <p>21 I mean, it's not what Buckley requires, it's what the</p> <p>22 guidelines require.</p> <p>23 Q. So you have a general sense that it's not</p> <p>24 valid, but you can't point to specific things within the</p> <p>25 department?</p>
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<p>1 the beam mill does selection procedures?</p> <p>2 A. Again, I think that there was a subjective</p> <p>3 combination of a number of different factors with</p> <p>4 relatively little guidance on how those criteria should</p> <p>5 go together. The weighting of those criteria.</p> <p>6 Q. And that was across the board or within a</p> <p>7 certain department?</p> <p>8 A. You know, again, I wouldn't want to talk common</p> <p>9 about individually. I saw just that in general as a</p> <p>10 practice that occurred.</p> <p>11 Q. Okay.</p> <p>12 A. Okay.</p> <p>13 Q. Just a practice that occurred across the --</p> <p>14 A. In general across the board, I think.</p> <p>15 Q. All right. So is it your opinion that the</p> <p>16 company selection methods are not valid?</p> <p>17 A. You know, I've not had the information to -- to</p> <p>18 make that judgment. With the information that I have,</p> <p>19 the information that I've been privy to, I would come to</p> <p>20 that conclusion.</p> <p>21 Q. Okay. But the first part of your statement was</p> <p>22 that you don't think you had enough information to make</p> <p>23 that determination?</p> <p>24 A. Well, with more information, I will -- I would</p> <p>25 -- you know, I would be -- I would amend my report with</p>	<p>1 MR. WIGGINS: Objection to the form. That</p> <p>2 doesn't -- it's not reflective of what his actual</p> <p>3 testimony is.</p> <p>4 BY MR. FARRIS:</p> <p>5 Q. Okay. Well, then explain to me within each</p> <p>6 department, for instance, specific examples of how the</p> <p>7 process is not valid.</p> <p>8 A. Well, I believe that in the absence of</p> <p>9 information, it's that -- the only -- in the absence of</p> <p>10 information about those jobs, the only conclusions I</p> <p>11 could come to is that they are not job -- is that they</p> <p>12 are not valid processes.</p> <p>13 Q. Okay. But you had some information about how</p> <p>14 the jobs are selected, did you not, in the depositions?</p> <p>15 A. I did. I did a little bit.</p> <p>16 Q. Okay.</p> <p>17 A. Enough for me to know that they were consistent</p> <p>18 in their subjectivity.</p> <p>19 Q. So it's possible then that if you had had more</p> <p>20 information, you might have found there to be valid</p> <p>21 processes?</p> <p>22 A. Possible. I guess that's an empirical question</p> <p>23 as we say.</p> <p>24 Q. Okay. Does one have to be an industrial</p> <p>25 psychologist to perform a job analysis under the uniform</p>

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<p>1 guidelines?</p> <p>2 A. Gosh, no.</p> <p>3 Q. Okay.</p> <p>4 A. Not to my knowledge. The guidelines just say</p> <p>5 basically what it -- what the -- what information needs</p> <p>6 to be captured. I, in fact, did a number of job</p> <p>7 analysis as a first year graduate student, so....</p> <p>8 Q. Let's move on to your resume and talk a little</p> <p>9 bit about your background here.</p> <p>10 A. Great. Great. Great.</p> <p>11 Q. You've been, according to your resume, the</p> <p>12 director of the division of management --</p> <p>13 A. Uh-huh.</p> <p>14 Q. -- at the University of Oklahoma --</p> <p>15 A. University of Oklahoma.</p> <p>16 Q. -- since July of 1998?</p> <p>17 A. That's right.</p> <p>18 Q. Correct?</p> <p>19 A. That's right.</p> <p>20 Q. Do you make employment selections in your role</p> <p>21 as the director of the division of management?</p> <p>22 A. In conjunction with other faculty members, yes.</p> <p>23 Q. Okay. So you do -- how often do you make</p> <p>24 employment decisions?</p> <p>25 A. On occasion. You know, hiring new faculty</p>	<p>1 A. You know, typically there are -- there are a</p> <p>2 group interviews and individual interviews.</p> <p>3 Q. Do every one of the individuals ask the same</p> <p>4 questions of the -- of the candidates?</p> <p>5 A. We all ask questions about the research.</p> <p>6 Q. But do you have a set of written questions that</p> <p>7 every interviewer uses?</p> <p>8 A. Typically there are some questions that we --</p> <p>9 that we have written down that we have talked about</p> <p>10 beforehand, where they went to school, what their</p> <p>11 research is like, you know, where they presented papers,</p> <p>12 those kind of things.</p> <p>13 Q. And do all the interviewers use those exact</p> <p>14 same questions for every candidate?</p> <p>15 A. Typically when we meet in a group we talk about</p> <p>16 those with the candidate.</p> <p>17 Q. Okay. But if you're doing an individual</p> <p>18 interview, do you have a set list of questions that</p> <p>19 every interviewer uses when they are individually</p> <p>20 interviewing?</p> <p>21 A. You know, I'm trying to think if there are --</p> <p>22 no. But we all have -- we all do have questions that we</p> <p>23 ask.</p> <p>24 Q. Okay. What kind of qualifications do you</p> <p>25 consider when looking at a potential faculty member?</p>
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<p>1 members, hiring people, hiring secretarial staff.</p> <p>2 Q. Is it your responsibility as a director of the</p> <p>3 department to ensure that you meet the uniform</p> <p>4 guidelines when you make selection decisions?</p> <p>5 A. Oh, absolutely.</p> <p>6 Q. Okay. Well, let's talk about what positions</p> <p>7 that you hire for. You hire, you said, for</p> <p>8 administrative people?</p> <p>9 A. Uh-huh.</p> <p>10 Q. And then also faculty positions?</p> <p>11 A. Uh-huh.</p> <p>12 Q. Are those the only types of positions?</p> <p>13 A. They are. They are.</p> <p>14 Q. When you evaluate a candidate for, let's say,</p> <p>15 for a faculty position, do you look at their work</p> <p>16 history?</p> <p>17 A. We sure do.</p> <p>18 Q. Okay. Do you look at their training</p> <p>19 background?</p> <p>20 A. Their academic training.</p> <p>21 Q. Okay. Do you use a structured interview</p> <p>22 process when you interview these guys?</p> <p>23 A. There's a series of questions that we ask.</p> <p>24 Q. Okay. And is that individuals do the</p> <p>25 interviews?</p>	<p>1 A. Terminal degree, the quality of the research</p> <p>2 training that they have received.</p> <p>3 Q. What about for the hourly people, the admin</p> <p>4 people that you hire, what qualifications do you look</p> <p>5 for then?</p> <p>6 A. Past experience. And I must tell you that the</p> <p>7 hiring that's done is not just -- is not -- I have never</p> <p>8 hired anyone at the university. The university, they</p> <p>9 are hired by the central administration at the</p> <p>10 university just based on some suggestions usually made</p> <p>11 by a committee that I'm typically a part of.</p> <p>12 Q. Okay. So your role is just to make suggestions</p> <p>13 and --</p> <p>14 A. Just a member. That's right.</p> <p>15 Q. -- and to interview people?</p> <p>16 A. That's right.</p> <p>17 Q. Do y'all use any type of preemployment tests?</p> <p>18 A. No, but there are some issues. For example,</p> <p>19 where they are their -- well, in fact, this would be</p> <p>20 considered a test since most things you use for</p> <p>21 selection are tests. Whether they finished their degree</p> <p>22 or not, what area their degree is in, what kind of</p> <p>23 courses they have taken over the course of their</p> <p>24 training, how good are they at statistical analysis,</p> <p>25 those kind of issues.</p>

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1 Q. Okay. Of those things, how do you weight those
2 qualifications?

3 A. Well, the -- you want to talk about me
4 personally?

5 Q. Sure.

6 A. Me, personally, what I look at are, you know,
7 the quality of the training that they have received.

8 Q. But do you assign a specific weight to each one
9 of those selection criteria you look at?

10 A. Yeah. Well, do we have it written down
11 anywhere that there's a particular weight, the answer is
12 no.

13 Q. Okay. Would each interviewer use the same
14 weighting or is that up to the individual interviewer?

15 A. No. I think basically we all ask similar
16 questions and we all look for different things. And I
17 assume that that then when we get together we talk about
18 those issues, who's noticed what, what are some of the
19 areas they looked at and why they were -- why they
20 thought they were important.

21 Q. Okay. Did you perform ever a job analysis for
22 the positions you hired for at Oklahoma?

23 A. There are job analyses available for these.
24 They are updated. In fact, I know I had one updated a
25 little while ago for a clerical position in my -- jobs

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1 change rather rapidly.

2 Q. Are you the one that creates or conducts the
3 job analysis?

4 A. I do not. It's a different area. It's the
5 human resources function at school.

6 Q. Okay.

7 A. At OU.

8 Q. Have you done any kind of adverse impact
9 analysis for your hiring decisions in the department?

10 A. I have not. That's not in my -- but we do
11 follow all the guidelines through the affirmative action
12 department, et cetera.

13 Q. Okay. So that's not your --

14 A. That's not my --

15 Q. That's not your responsibility?

16 A. That's right. They determine what -- they
17 certify whether the pool is an acceptable pool of
18 candidates.

19 Q. Okay. Do you retain any documents regarding
20 the job analysis or the -- your validation efforts?

21 A. No. They are kept in a centralized location.

22 Q. So you don't keep anything personally --

23 A. No, I don't keep them.

24 Q. -- in your department?

25 A. No, I don't keep them.

1 Q. Okay. Now, let's go through another part of
2 your resume. You talked about your consulting work.

3 A. Yeah. Okay.

4 Q. Again, I think it's on the last page --

5 A. Sure.

6 Q. -- if you want to flip to that.

7 I just want to go through a couple of these
8 items and see what you did for these companies?

9 A. Sure. Sure.

10 Q. For Fleming Companies, Inc., you said you
11 worked as a consultant --

12 A. I sure have.

13 Q. -- from 1992 to 1997?

14 A. Right. Quite a -- quite a number of years.
15 What I did for them was just reengineer the human
16 resources process, looked at a number of different
17 things, selection, recruitment. Just in general human
18 resource issues that I thought they could -- they could
19 implement to do a better job.

20 Q. So when --

21 A. Fleming, incidentally now is out of business
22 but....

23 Q. Okay. I'm sure no --

24 A. I'm hoping -- I'm sure that's not due to my --

25 Q. What does Fleming Company -- or what did they

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1 do?

2 A. It was one on the largest food distribution
3 companies in the country. They basically -- when you go
4 in your store, you buy Best Value brands, Best Value is
5 Fleming. They used to just -- again, just a big
6 logistics operation.

7 Q. So the facility where you did this work for,
8 what was their exact function?

9 A. It was corporate. It was the corporate
10 headquarters up in Oklahoma City. It was headquartered
11 in Oklahoma City.

12 Q. Okay. So you didn't work in one of their
13 warehouses or distribution centers?

14 A. I did visit a number of their warehouses and
15 distribution centers just to kind of familiarize myself
16 with the jobs that they have.

17 Q. Okay. So you did do some sort of analysis, the
18 distribution type jobs?

19 A. Well, not in an analysis of the jobs, but just
20 wanted to more better understand what they -- what they
21 did so that I could -- I could kind of determine what
22 needed to be done for them from a human resources
23 standpoint. It was basically, you know, freelance.
24 Come and help us do this better, come help us reengineer
25 our human resource function so we can add value to

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<p>1 Fleming.</p> <p>2 Q. Did you do any kind of job analysis for them?</p> <p>3 A. I didn't personally do it --</p> <p>4 Q. Okay.</p> <p>5 A. -- but I suggested a number of occasions that</p> <p>6 they needed to do that. Job analysis is something that</p> <p>7 needs to be done quite often.</p> <p>8 There's a fellow named Brumbeck who wrote</p> <p>9 an article in the Seventies that talked about how --</p> <p>10 since it is so imprecise, it needs to be done on a</p> <p>11 relatively frequent basis.</p> <p>12 Q. Did you do any kind of adverse impact analysis</p> <p>13 for them -- for Fleming?</p> <p>14 A. I did not. That's a different -- that's their</p> <p>15 human resources function.</p> <p>16 Q. Okay. Did you do a validation study for</p> <p>17 Fleming?</p> <p>18 A. I did not, but talked about some of their</p> <p>19 selection -- some of the selection tests that they used.</p> <p>20 Some I thought they were pretty good, some I thought</p> <p>21 weren't very good.</p> <p>22 Q. Okay. Let's see.</p> <p>23 A. You know what, I'm just a human resource</p> <p>24 generalist in terms of that. I think my expertise is in</p> <p>25 knowing the human resource function, a number of</p>	<p>1 Q. Okay. When was that?</p> <p>2 A. It was -- it's been within the past 10 years.</p> <p>3 I -- you know, as you might be able to tell from my</p> <p>4 vitae, I try to do a significant amount of research.</p> <p>5 And those of us who do research understand that you --</p> <p>6 Kevin Mosholder is a professor of mine from Auburn</p> <p>7 University. It was great lesson for me as I was a</p> <p>8 graduate student. If you'll spare me this for a moment.</p> <p>9 He -- I went into his office one day and he</p> <p>10 had four file cabinets of information. And he said, you</p> <p>11 see that one file cabinet? I'm real proud of that. I</p> <p>12 said, well, great, Kevin. You're a well-known scholar.</p> <p>13 He said you see those other three file cabinets of</p> <p>14 information? I said, yes. And he said, well, they are</p> <p>15 the studies that just didn't work out the way I thought</p> <p>16 they would. So sometimes it works out and sometimes it</p> <p>17 doesn't in terms of research.</p> <p>18 Q. Is that the only validation study you've done?</p> <p>19 A. Probably.</p> <p>20 Q. Okay.</p> <p>21 A. Probably.</p> <p>22 Q. Let's talk about your next one. You worked for</p> <p>23 the City of Norman --</p> <p>24 A. Worked for the City of Norman.</p> <p>25 Q. -- from 1987 to the present?</p>
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<p>1 different areas and hopefully can add value to a company</p> <p>2 if they ask me to.</p> <p>3 Q. So you would not consider yourself to be an</p> <p>4 expert in validation studies?</p> <p>5 A. I believe that I possess sufficient expertise</p> <p>6 to make a judgment about validation issues.</p> <p>7 Q. Okay. To make a judgment about them?</p> <p>8 A. Yeah.</p> <p>9 Q. What about to conduct a validation study?</p> <p>10 A. Oh, I am -- I am confident that I can conduct a</p> <p>11 validation study.</p> <p>12 Q. Okay. Have you done one before?</p> <p>13 A. Just in some research -- in some research where</p> <p>14 I looked at some concurrent validation, see if this test</p> <p>15 is related to this -- to performance at a certain point</p> <p>16 in time. It's a part of criterion related validity.</p> <p>17 There's a predictive and concurrent.</p> <p>18 Predictive is I collect some data, save it, use it to</p> <p>19 predict something later. Concurrent is where I collect</p> <p>20 data, collect -- I collect like a predictor, a test or</p> <p>21 something and relate it to some kind of outcome, job</p> <p>22 performance, something like that.</p> <p>23 Q. So you did that in a study at some point?</p> <p>24 A. A research study that frankly wasn't very</p> <p>25 successful.</p>	<p>1 A. Uh-huh.</p> <p>2 Q. What did you do for them?</p> <p>3 A. Basically what I did is I ran an assessment</p> <p>4 center for them to try to help them select their top</p> <p>5 city managers. I think it was a city planner and a</p> <p>6 finance director. And then I also ran an assessment</p> <p>7 center where I just basically made some comments about</p> <p>8 the managerial skills of those who were managers for</p> <p>9 them at the time.</p> <p>10 You know, an assessment center -- you may</p> <p>11 or may not be familiar with it. It's just basically you</p> <p>12 give a person a bunch of decisions to make and see how</p> <p>13 they make them, do they -- how they delegate, how they</p> <p>14 are prioritizing. Those are real important management</p> <p>15 functions.</p> <p>16 Q. So what -- so you were like looking at the</p> <p>17 management jobs there?</p> <p>18 A. Basically at management jobs there.</p> <p>19 Q. And what kind of management jobs were they?</p> <p>20 A. City level managers, you know, director of</p> <p>21 finance, director of human resources, director of</p> <p>22 planning, director of housing --</p> <p>23 Q. Okay.</p> <p>24 A. -- those kind of things. And it was just kind</p> <p>25 of give them some advice on some developmental</p>

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1 activities that might help them become better managers.
 2 Q. Okay. But you didn't do a validation study?
 3 A. Did not do a validation study for them.
 4 Q. Any job analysis?
 5 A. Did not do a job analysis for them, but was
 6 quite familiar with the job analyses that they had for
 7 the positions that they asked me to make some managerial
 8 suggestions with.
 9 Q. All right. The next company you have down here
 10 is one that you consulted for is the US Geological
 11 Survey?
 12 A. Yeah. This was when I was a graduate student.
 13 I've been fortunate to work for a gentleman named John
 14 Bernard and who I believe is the academic expert in the
 15 country on performance evaluation. He had a number of
 16 contracts with them which I assisted on and it was just
 17 to basically look at their performance appraisal system,
 18 whether they are doing a good job in performing its
 19 appraisal, whether they are doing the appropriate
 20 documentation of the systems that they use. If it's the
 21 good -- if it fits in well with the jobs that they are
 22 -- that they are using. You know, and basically it gave
 23 me some training in some of the legal issues surrounding
 24 performance evaluation and how to do a -- how to
 25 implement a good performance appraisal system.

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1 Q. What jobs were you looking at there?
 2 A. They range from entry level jobs to
 3 professional jobs.
 4 Q. And what kind of jobs were the entry level
 5 jobs?
 6 A. Oh, gosh. They were -- you know, they ranged
 7 from people who did site visits for the geological
 8 survey to higher level managers. It was the whole
 9 spectrum of performance evaluation.
 10 Q. Okay. And you did that as a graduate student?
 11 A. I did that as a graduate student. I've also
 12 done a number of other performance appraisal projects
 13 for organizations.
 14 Q. Did you do any validation studies for the
 15 geological service?
 16 A. Did not.
 17 Q. How about any job analyses?
 18 A. No, but looked at plenty of job analyses.
 19 Q. Okay. All right. We're going to get into
 20 these other Fortune 500 clients --
 21 A. Yeah, go ahead.
 22 Q. -- so we may want to flip the tape here.
 23 A. Great.
 24 MR. FARRIS: So, go off the record for a
 25 second.

1 VIDEOGRAPHER: Off the record at 9:24 a.m.
 2 Ending Tape 1.
 3 (Recess from 9:24 to 9:33 a.m.)
 4 VIDEOGRAPHER: On the record at 9:33 a.m.
 5 Starting Tape 2.
 6 BY MR. FARRIS:
 7 Q. Okay. I want to just go back briefly and your
 8 selection of candidates at the University of Oklahoma.
 9 A. Uh-huh.
 10 Q. You said that you looked at their work
 11 experience?
 12 A. Uh-huh.
 13 Q. And you'll look at their credentials?
 14 A. They're academic credentials.
 15 Q. Academic credentials?
 16 A. Uh-huh.
 17 Q. And you would perform an interview?
 18 A. Uh-huh.
 19 Q. And how do you combine all of those things
 20 together to make a determination as to which candidate
 21 you'll select?
 22 A. They are combined by a committee, a committee
 23 -- there's typically a hiring committee that combines
 24 that information.
 25 Q. How do they combine it?

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1 A. They combine it in a -- based on what they
 2 believe to be the most important job parts of being a
 3 university professor.
 4 Q. Okay. And is that more of a subjective
 5 decision as to what makes someone a good professor?
 6 A. I think there's a lot of objective factors
 7 associated with it like publication record which is an
 8 object -- publication record is an objective indicator
 9 of one's contribution to the scholarly literature.
 10 Q. But is there some combination of both objective
 11 and subjective factors?
 12 A. Yeah, of course.
 13 Q. Okay. And do you ever write down the exact
 14 weight that you're giving to each one of the factors
 15 that you use?
 16 A. We talk about beforehand what's important to
 17 us. Like, for example, does the person -- we're in need
 18 of a person to teach entrepreneurship. Well, then that
 19 would be one of the factors that we weigh highly.
 20 Q. Okay. But do you write down how you've
 21 weighted the factors?
 22 A. Well, I think that they are -- yeah. Typically
 23 it's written down what's more important. A number is
 24 not associated with it, but it's written down.
 25 Q. Okay. So there is no number or percentage

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<p>1 given to each one?</p> <p>2 A. No.</p> <p>3 Q. And do you retain those notes that you've</p> <p>4 written down?</p> <p>5 A. Typically we do for a short period of time.</p> <p>6 Q. Okay. How long a period of time do you keep</p> <p>7 them?</p> <p>8 A. Oh, gosh. A month.</p> <p>9 Q. Okay. And do you believe that this satisfies</p> <p>10 the EEOC uniform guidelines?</p> <p>11 A. I believe it's a competent selection procedure.</p> <p>12 Q. Okay. But do you believe it satisfies the</p> <p>13 uniform guidelines?</p> <p>14 A. I believe it's based on a -- it's based on a</p> <p>15 job analysis. You know, I haven't thought about it in</p> <p>16 terms of that. I do think, though, that we are in</p> <p>17 accordance with the uniform guidelines.</p> <p>18 Q. Okay. So you do think the way you do it is in</p> <p>19 accordance with the guidelines?</p> <p>20 A. Well, I didn't say that. I have to sit down</p> <p>21 and think about that a little bit more.</p> <p>22 Q. So you've never analyzed then whether you're in</p> <p>23 compliance with the uniform guidelines?</p> <p>24 A. Not specifically, no.</p> <p>25 Q. Okay. All right. Back to your resume --</p>	<p>1 these 10 clients?</p> <p>2 A. I've looked at selection procedures and whether</p> <p>3 I thought they were job related or not, whether I</p> <p>4 thought that they were -- that they were tapping the</p> <p>5 factors that were important based on the job analysis.</p> <p>6 Q. Okay. But have you ever done a scientific job</p> <p>7 analysis?</p> <p>8 A. I have not had -- oh, a job analysis?</p> <p>9 Q. Yes.</p> <p>10 A. Yes. I think so, for managerial positions.</p> <p>11 Q. Okay. And what did you do when you conducted</p> <p>12 the scientific job analysis?</p> <p>13 A. Well, you go in and talk to a number of people</p> <p>14 who are in there, you get people who perform the job,</p> <p>15 people who interact with the person who performs the</p> <p>16 job. You know, when you do job analysis, the correct</p> <p>17 way to do job analysis, at least based on my training,</p> <p>18 is that job analysis is done from a number of different</p> <p>19 sources. It's never a single source issue. Because of</p> <p>20 the imprecision involved with job analysis, it has to be</p> <p>21 done often, with multiple corroborations, multiple --</p> <p>22 multiple data points. Fliesman -- I'm sorry.</p> <p>23 Levine -- Ed Levine is a big job analysis person from</p> <p>24 the University of South Florida and he's written an</p> <p>25 article about how most -- in a survey of 93 job</p>
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<p>1 A. Great.</p> <p>2 Q. -- on the consultant jobs that you've done, you</p> <p>3 said that you've consulted for a number of other Fortune</p> <p>4 500 clients?</p> <p>5 A. I sure have.</p> <p>6 Q. That you're not at liberty to discuss because</p> <p>7 of confidentiality agreements.</p> <p>8 About how many other clients are there?</p> <p>9 A. I'd probably say 10.</p> <p>10 Q. Okay. 10.</p> <p>11 And how long a period of time is that over?</p> <p>12 A. That's over -- that's over my career.</p> <p>13 Q. Okay.</p> <p>14 A. I'm not a person with a large client base</p> <p>15 so....</p> <p>16 Q. Okay. And you have confidentiality agreements</p> <p>17 with all 10 of these clients?</p> <p>18 A. Well, just that I won't talk of -- you know,</p> <p>19 for profit organizations don't typically want people</p> <p>20 talking about what they do for them and I -- I abide by</p> <p>21 that.</p> <p>22 Q. Okay. Well, let's -- we can at least talk in</p> <p>23 generalities about it?</p> <p>24 A. Yeah, that's right.</p> <p>25 Q. Have you done validation studies for any of</p>	<p>1 analysis, he -- basically 80 of them, I believe, or 83</p> <p>2 -- it's a large number, basically says that you need to</p> <p>3 use a number of different sources. It's an Academy of</p> <p>4 Management Journal article from 1989, I think.</p> <p>5 Q. Of these Fortune 500 clients, how many did you</p> <p>6 do this specific job analysis for?</p> <p>7 A. One.</p> <p>8 Q. One of them?</p> <p>9 A. Uh-huh.</p> <p>10 Q. And in that case, what jobs were you looking</p> <p>11 at? What kinds of jobs?</p> <p>12 A. Again, mainly managerial jobs.</p> <p>13 Q. Okay.</p> <p>14 A. And it was a management succession issue, who</p> <p>15 should go -- who should go next, you should.</p> <p>16 Q. How many different types of jobs were you</p> <p>17 looking at?</p> <p>18 A. Oh, gosh. Gosh. Usually a very small amount,</p> <p>19 two probably.</p> <p>20 Q. Okay. Two jobs.</p> <p>21 And how did you go about conducting the job</p> <p>22 analysis for those two jobs, what exactly did you do?</p> <p>23 A. I looked at a number -- again, I looked at a</p> <p>24 number of different sources of information, people who</p> <p>25 perform that job, people who interact with the person</p>

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<p>1 who performs that job, what supervisors thought that job 2 should be, what subordinates thought that job should be. 3 Q. Do you have a list of -- 4 A. Just a number of different -- different data 5 points. 6 Q. Did you have a list of data points that you 7 would ask each of these people? 8 A. I don't know if I had a specific list, but, you 9 know, always try to get corroborating data. One of the 10 things I've been trained as always find corroborating 11 data. Single source data is not good data. 12 Q. Did you document your job analysis? 13 A. Absolutely, I did. 14 Q. How did you document it? 15 A. I just wrote it out who I talked to, what the 16 timing was, what the -- you know, the uniform 17 guidelines, I think, go through what needs to be 18 included in that, where it is, what is done, criticality 19 of the tasks, those kind of issues. 20 Q. And you did all of those things based on -- 21 A. I believe I did a lot of them, yes. 22 Q. What about validity studies for these ten 23 Fortune 500 clients, did you do any -- 24 A. Have not. 25 Q. Okay. And you said that in your role at</p>	<p>1 me information about that job. I would call that person 2 and say, listen, I'm coming to talk to you about your 3 job. I want you to bring some supporting information to 4 tell me what you do. I'd talk to other people who are 5 -- who interact with that person. I talk with 6 supervisors, I talk with subordinates, I talk with other 7 folks, just a whole assortment of information. Again, I 8 think the most competent way to collect job analysis 9 information is to collect it from a number of different 10 sources, not -- again, it's just been drilled into me, 11 single source data is not the best data. 12 Q. So these other sources you said you would look 13 at some information that the company would provide to 14 you about the jobs? 15 A. Sure. There is company provided information, 16 there is information provided by the individual doing 17 the job. 18 Q. What kinds of company provided information 19 would you -- 20 A. Just the job analysis that they have, any kind 21 of job descriptions, job specifications that they 22 possess at that time. 23 Q. Okay. So you would look at job descriptions. 24 What about job postings? 25 A. You know, not a lot of job postings. Not a lot</p>
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<p>1 Oklahoma University that you have never conducted a job 2 analysis? 3 A. I never had conducted a job analysis done by a 4 different part of the organization that I'm a part of. 5 It's done by the human resources people. 6 Q. So what other job analysis have you done 7 besides this one for the unnamed Fortune 500 Company? 8 A. Oh, I've done a number of job analyses. In 9 fact, early in my career -- my first -- my first 10 graduate school appointment was a Case Western Reserve 11 University in Cleveland, Ohio. And I was -- one of the 12 ways that I made my money was to -- to go and do job 13 analyses. I was only at Case Western for one year. 14 Q. Okay. And aside from that, what other job 15 analyses have you done? 16 A. Some managerial job analyses. I talked with 17 people about jobs but never really -- only on those 18 occasions have I done the nuts and bolts of a job 19 analysis. 20 Q. Okay. Let's -- I just want to make sure I know 21 what the nuts and bolts are of the job analysis. 22 A. Yeah. 23 Q. Can you just describe to me like the first step 24 that you do when you go in to conduct a job analysis? 25 A. Yeah. I'd look at whatever I could that gives</p>	<p>1 of lot of job postings. 2 Q. If they had job postings, is that something you 3 would want to see? 4 A. It's something that you could look at it. It's 5 something you could look at. 6 Q. Is it in the past if you were conducting a job 7 analysis, is that something you would have asked for? 8 A. I may have. I may have. 9 Q. Okay. 10 A. But it's not the most important information to 11 me I don't think. 12 Q. Okay. In your work as a consultant, how much 13 of your time is spent working as a consultant? How much 14 time percentage on an annual basis? 15 A. Oh, a small amount. Small amount. 16 Q. Like what's a small amount? 17 A. Gosh. If my income is 200 K, my consulting 18 income is 10 K, very small amount. 19 Q. But it -- 20 A. My primary duties are as university professor. 21 Q. But timewise, could you -- could you describe? 22 I know you've described it monetarily, but -- 23 A. That's two weeks. 24 Q. Two weeks a year? 25 A. Yeah.</p>

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<p>1 Q. About?</p> <p>2 A. Yeah.</p> <p>3 Q. Okay.</p> <p>4 A. Again, my primary duties are as a professor at</p> <p>5 the University of Oklahoma.</p> <p>6 Q. Okay. In the matters of employment</p> <p>7 discrimination litigation, what fields do you consider</p> <p>8 yourself to be an expert in?</p> <p>9 A. You know, I -- I think I've been trained in the</p> <p>10 number of areas surrounding employment litigation,</p> <p>11 adverse impact, affirmative action, those kinds of</p> <p>12 issues and it's mainly from my teaching</p> <p>13 responsibilities, to make students aware what these</p> <p>14 issues are.</p> <p>15 Q. Do you consider yourself to be a expert in</p> <p>16 adverse impact calculations?</p> <p>17 A. I know something about them. I know a</p> <p>18 considerable amount about that.</p> <p>19 Q. Do you have some statistical training that --</p> <p>20 A. I have statistical training, quite a bit of</p> <p>21 statistical training.</p> <p>22 Q. Do you have the kind of statistical training</p> <p>23 that you would consider to qualify yourself as an expert</p> <p>24 in making adverse impact calculations?</p> <p>25 A. Yeah, I'm not sure it's what I feel most</p>	<p>1 A. They were.</p> <p>2 Q. Is that also an authoritative --</p> <p>3 A. They are.</p> <p>4 Q. -- text?</p> <p>5 Okay. Let's go back to your report,</p> <p>6 Page 4.</p> <p>7 A. Yeah. Here. Just get a drink here if I can.</p> <p>8 Q. Sure.</p> <p>9 A. Okay.</p> <p>10 Q. Your source documents, again, we've already</p> <p>11 gone through this. This is the complete list of the</p> <p>12 documents that you reviewed.</p> <p>13 A. Uh-huh. Okay. Where are you at?</p> <p>14 Q. Page 4, which is the source documents --</p> <p>15 A. Okay. That's --</p> <p>16 Q. -- in your report. In your report.</p> <p>17 A. No, I don't have the full report. I just have</p> <p>18 what I've written.</p> <p>19 Q. Yeah. I think we gave you the full copy.</p> <p>20 A. Did you give me a copy?</p> <p>21 Q. Yeah.</p> <p>22 A. Okay.</p> <p>23 Q. You can look at that one. So the very</p> <p>24 beginning on Page 4.</p> <p>25 A. Okay. Good. Yeah. Go ahead.</p>
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<p>1 comfortable doing and it's not what I've been asked to</p> <p>2 do in this case, but it's a -- I've got a pretty good</p> <p>3 statistical background.</p> <p>4 Q. Have you done adverse impact calculations in</p> <p>5 the past?</p> <p>6 A. On some hypothetical data that I've had for</p> <p>7 students, et cetera. I've looked at some for some</p> <p>8 organizations to see some discrimination -- if they are</p> <p>9 some discrimination issues.</p> <p>10 Q. But for these organizations you've looked at in</p> <p>11 the past, have you conducted any actual adverse impact</p> <p>12 calculations on your own?</p> <p>13 A. I have not.</p> <p>14 Q. Okay. And have you ever testified with regard</p> <p>15 to adverse calculations?</p> <p>16 A. Have not. Have not.</p> <p>17 Q. Okay. Would you agree that the American</p> <p>18 Psychological Association's standards for educational</p> <p>19 and psychological testing are typically viewed as an</p> <p>20 authoritative source in your field?</p> <p>21 A. Absolutely, and they are.</p> <p>22 Q. What about the principles for validation and</p> <p>23 use of personnel selection procedures?</p> <p>24 A. That's by SIOP?</p> <p>25 Q. By SIOP.</p>	<p>1 Q. Okay. So you -- you said these are the only</p> <p>2 items that you reviewed --</p> <p>3 A. They are.</p> <p>4 Q. -- correct?</p> <p>5 Let's go to Page 5 of your report.</p> <p>6 A. Page 5, okay.</p> <p>7 Q. Let me find what I'm looking for here. We'll</p> <p>8 come back to Page 5.</p> <p>9 A. Yeah, that's fine.</p> <p>10 Q. Let's ask about some of these things.</p> <p>11 A. Yeah.</p> <p>12 Q. Did you review any Nucor Berkeley job</p> <p>13 descriptions prior to drafting your report?</p> <p>14 A. I did not.</p> <p>15 Q. Okay. Why didn't you review them?</p> <p>16 A. I believe that the uniform guidelines that</p> <p>17 there is an affirmative obligation on the -- on y'all's</p> <p>18 part to provide those to me to make a judgment about</p> <p>19 those.</p> <p>20 Q. If those have been provided to your attorney,</p> <p>21 would you have wanted to review them?</p> <p>22 A. If asked, I would. I think they are important</p> <p>23 documents.</p> <p>24 Q. Do you know if your attorney sent them?</p> <p>25 A. Sent them to me.</p>

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<p>1 Q. Or if your attorneys had them in their 2 possession? 3 A. I would assume that if they had them, they 4 would have sent them to me. 5 Q. Okay. 6 A. I mean, that's a question more appropriately 7 asked, I believe, to them. 8 Q. Okay. But you didn't ask them for any job 9 descriptions? 10 A. Did not. 11 Q. And is it your job as an expert to review all 12 of the available materials in making your decision? 13 A. It's my job to evaluate the material that I 14 have -- that I have access to. At least it's my belief 15 it's an affirmative obligation for that to be provided 16 -- for that to be provided by the -- 17 Q. Do you think that you can make a competent 18 opinion on whether a company's selection procedures are 19 valid just by looking at deposition testimony? 20 A. I think it gives you some pretty good 21 information on what the selection procedure has been 22 like, yes. I think there is some -- 23 Q. Is that typically what you have done in the 24 past when conducting an analysis of one of your clients? 25 A. Well, I would --</p>	<p>1 Q. Okay. Well, the cases where you've used 2 deposition testimony in the past -- 3 A. Yeah. 4 Q. -- let's go through those. Give me an example 5 of a case where you've used deposition testimony in the 6 past? 7 A. A sexual harassment case. 8 Q. Okay. When was it? 9 A. A little while -- a couple months back. 10 Q. Okay. And what did you examine in this case? 11 A. The complaint and some depositions taken by 12 some of the complainants. 13 Q. Did you conduct a job analysis in that case? 14 A. Didn't feel a need to. 15 Q. Did you conduct a validation study in the case? 16 A. Didn't feel a need to. 17 Q. Did you examine the company's selection 18 procedures in that case? 19 A. Did not. 20 Q. Let's talk about a case where you have examined 21 a company's selection procedures in the past. 22 Is there an example where you've examined a 23 company's selection procedures where you looked at 24 deposition testimony? 25 MR. WIGGINS: Objection to form. There is</p>
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<p>1 MR. WIGGINS: Objection to form. Those are 2 two -- that's a compound question. 3 BY MR. FARRIS: 4 Q. All right. Well, let's take it one at a time. 5 In the past when you've done your work as a 6 consultant, had you ever performed a job analysis based 7 solely on deposition testimony? 8 MR. WIGGINS: Object to form. 9 A. Yeah. I'm not sure I understand what that 10 means. 11 BY MR. FARRIS: 12 Q. Well, have you ever used deposition testimony 13 in the past when doing your work for a consultant as a 14 consultant? 15 A. Yes, I've looked at depositions before. 16 Q. Okay. But was that the only thing that you 17 looked at in that example? 18 Did you look at anything else besides 19 deposition testimony in that case? 20 MR. WIGGINS: Object to form. I'm not 21 sure -- 22 A. Yeah, which case? 23 MR. WIGGINS: -- which case we're talking 24 about. 25 BY MR. FARRIS:</p>	<p>1 no predicate that there has ever been such a case. I 2 think you ought to establish if it exists, first. 3 MR. FARRIS: Well, I'm asking him if there 4 is a case where you've ever looked at deposition 5 testimony when examining a company's job selection 6 procedures. 7 MR. WIGGINS: Well, object to form. There 8 is no predicate laid that there is any case that -- any 9 case that had depositions. 10 BY MR. FARRIS: 11 Q. Okay. Well, I'm asking you, is there a case 12 where -- you've said that you have looked at cases in 13 the past where there were depositions? 14 A. Yes, I have. 15 Q. Correct? 16 A. Uh-huh. 17 Q. In any of those cases, were you examining the 18 selection procedures of the company? 19 A. Not that I can recall. 20 Q. So then never in the past have you examined a 21 company's selection procedures where there was 22 deposition testimony present? 23 A. Not that I can recall. 24 Q. Okay. If you had read job descriptions in this 25 case, do you think it might have changed your opinion in</p>

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<p style="text-align: right;">Page 82</p> <p>1 the case?</p> <p>2 A. I think that's an empirical question. It's</p> <p>3 hard to answer without seeing the information.</p> <p>4 Q. Okay. But could it have changed your opinion</p> <p>5 in the case?</p> <p>6 A. It's hard to say without seeing the</p> <p>7 information.</p> <p>8 Q. Okay. Why don't we look at a job description.</p> <p>9 (Exhibit No. 4 marked.)</p> <p>10 MR. FARRIS: I'll introduce this as our</p> <p>11 next exhibit.</p> <p>12 MR. WIGGINS: You got another page?</p> <p>13 MR. FARRIS: I got you one here.</p> <p>14 BY MR. FARRIS:</p> <p>15 Q. I've introduced a job posting for beam mill</p> <p>16 furnace stocker from October of 2004; is that correct?</p> <p>17 A. As far as I could see, yes.</p> <p>18 Q. Have you ever seen this before?</p> <p>19 A. I believe it may have been faxed to me</p> <p>20 yesterday.</p> <p>21 Q. Yesterday?</p> <p>22 A. Yesterday, yeah.</p> <p>23 MR. WIGGINS: Yeah. This is what you</p> <p>24 emailed me yesterday --</p> <p>25 THE WITNESS: Yeah.</p>	<p style="text-align: right;">Page 84</p> <p>1 awareness; is that correct?</p> <p>2 A. Uh-huh.</p> <p>3 Q. And No. 2 is excellent oral and written</p> <p>4 communication skills?</p> <p>5 A. It is.</p> <p>6 Q. No. 3 is teamwork oriented; 4, good</p> <p>7 troubleshooting skills; 5, self motivated; 6, good work</p> <p>8 ethic; 7, very cost and efficiency driven; 8, good work</p> <p>9 and attendance record; 9, mechanically inclined; 10,</p> <p>10 some computer skills; 11, knowledge of beam mill rolling</p> <p>11 process a plus; 12, furnace and reheat furnace knowledge</p> <p>12 a plus; and 13, willing to learn recorder and utility</p> <p>13 position.</p> <p>14 A. Uh-huh.</p> <p>15 Q. Are these qualifications something that you</p> <p>16 could use in conducting a job analysis?</p> <p>17 MR. WIGGINS: Objection to that. Go ahead</p> <p>18 and answer.</p> <p>19 A. Well, it seems to me as though this may be</p> <p>20 something that one could start from. There's a need for</p> <p>21 considerably more information than this.</p> <p>22 BY MR. FARRIS:</p> <p>23 Q. But it is something that could be used as part</p> <p>24 of forming a job analysis?</p> <p>25 A. It's a -- it's the beginnings, much more is</p>
<p style="text-align: right;">Page 83</p> <p>1 MR. WIGGINS: -- that I objected to. It's</p> <p>2 part of the compendium.</p> <p>3 THE WITNESS: Right.</p> <p>4 MR. FARRIS: No, this is a job posting that</p> <p>5 has been produced in the case.</p> <p>6 MR. WIGGINS: I understand that.</p> <p>7 MR. FARRIS: It has a production number at</p> <p>8 the bottom of it. This isn't prior to the compendium.</p> <p>9 This is a job posting that's been produced to you in the</p> <p>10 case.</p> <p>11 MR. WIGGINS: This is -- this is one of the</p> <p>12 parts of the compendium. If you look --</p> <p>13 MR. FARRIS: This is a job posting that has</p> <p>14 been produced in the case regardless of whether it's in</p> <p>15 the compendium.</p> <p>16 MR. WIGGINS: I'm just telling you that I</p> <p>17 emailed it to him yesterday because you emailed it to me</p> <p>18 yesterday.</p> <p>19 BY MR. FARRIS:</p> <p>20 Q. Okay. You, yesterday for the first time ever</p> <p>21 you saw any job posting in this case; is that correct?</p> <p>22 A. Yes, that's correct.</p> <p>23 Q. Okay. Would you look at it now and look at the</p> <p>24 qualifications listed there.</p> <p>25 No. 1 is excellent safety attitude and</p>	<p style="text-align: right;">Page 85</p> <p>1 necessary.</p> <p>2 Q. But is this something that would be helpful in</p> <p>3 determining whether a company has conducted a job</p> <p>4 analysis?</p> <p>5 MR. WIGGINS: Objection, form, and it's</p> <p>6 asked and answered.</p> <p>7 BY MR. FARRIS:</p> <p>8 Q. You can go ahead and answer.</p> <p>9 A. Repeat the question, please.</p> <p>10 Q. Is this something that you think could be</p> <p>11 helpful in conducting a job analysis?</p> <p>12 A. It may well be. I'm -- it may well be, but I</p> <p>13 believe there's a need for significantly more</p> <p>14 information than this.</p> <p>15 Q. Are you -- is there any requirement under the</p> <p>16 uniform guidelines that job analyses be conducted in</p> <p>17 conjunction with the development of selection</p> <p>18 procedures?</p> <p>19 A. I believe that to be the case.</p> <p>20 Q. Okay. Where in the uniform guidelines is that?</p> <p>21 A. I think doesn't 14 -- is it 14C and 15C. I</p> <p>22 don't have a copy in front of me.</p> <p>23 Q. Okay. So it's your understanding that's what</p> <p>24 the uniform guidelines require?</p> <p>25 A. That's correct.</p>

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<p>1 Q. Okay. You said that you need considerably more 2 information than this. 3 What other information would you need? 4 A. Well, I need to know -- I need to know how this 5 information was collected, what's the basis of it, 6 what's the criticality of it. There's a number of 7 different factors that need to be confronted that are, I 8 believe, in 14 -- 14C, the technical -- the technical 9 accuracy. 10 Q. So are you testifying that the functions 11 described here don't accurately reflect what's actually 12 required for the job? 13 A. You're asking me to make a judgment that I'm 14 not at this time prepared to make. 15 Q. Okay. So you can't make that judgment? 16 A. Yeah. 17 Q. Is that correct? 18 A. Not on the basis of this piece of paper. 19 Considerably more information is necessary. 20 Q. Okay. From what you have in this case, can you 21 make a judgment that these qualifications do not reflect 22 what's done on the job? 23 MR. WIGGINS: Objection to form. That's 24 not the issue. 25 BY MR. FARRIS;</p>	<p>1 information I have at my disposal. 2 Q. Did you review the plaintiffs' complaint in 3 this case? 4 A. You know, I believe that I have. I believe 5 that I have. 6 Q. It's not listed on your source materials, but 7 you did review it? 8 A. Gosh. 9 Q. I'm sorry. You did not review it or -- 10 A. You know, I can't recall. I can't recall. 11 Q. Okay. You did review deposition testimony; 12 correct? 13 A. I certainly did, yeah. 14 Q. Did any of the deposition testimony that you 15 reviewed reveal that the job posting requirements were 16 based on a job analysis? 17 A. I know it was hard to ferret out when reading 18 the depositions where the job analysis was, if there was 19 any, who had it, where it was, job descriptions. A 20 common thread was that not many people were familiar 21 with where that information was or if it even existed. 22 Q. Okay. Did you review the Court's order of a 23 scope of discovery in this case? 24 A. I don't believe I have. 25 Q. And did you review any materials from the</p>
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<p>1 Q. That's the question. 2 A. Yeah. I'm just not sure how I would answer 3 that question. I don't believe I can. 4 Q. Don't believe you can. 5 Okay. Have you developed your own 6 familiarity with jobs at Nucor Berkeley? 7 A. To the extent that I've looked at them through 8 the depositions. 9 Q. Do you know anything about the beam mill 10 furnace stocker position, for example? 11 A. Nothing specifically, no. 12 Q. Have you ever visited the facility? 13 A. Have not been asked to. 14 Q. Have you ever interviewed or observed any of 15 the employees? 16 A. Have not been asked to. 17 Q. Okay. Have you performed your own independent 18 job analysis of any of the specific jobs -- 19 A. Have not. 20 Q. -- at Nucor Berkeley? 21 A. Have not. 22 Q. Okay. And do you know of any job functions of 23 this particular job that are not accurately described on 24 this job posting? 25 A. I would not be able to answer that with the</p>	<p>1 Sadler group? 2 A. Sadler group, have not. 3 Q. Okay. Did you review any of the job specific 4 tests at issue in this case? 5 A. I did not, but I did -- I did not. I did not. 6 Q. Did you -- 7 MR. WIGGINS: Objection to form now on job 8 specific tests. I mean, that's assuming a lot that they 9 are job specific. 10 BY MR. FARRIS: 11 Q. Okay. Did you review any kind of tests in this 12 case? 13 A. Did not. 14 Q. Okay. Would those have been helpful in your 15 reaching your conclusions had you reviewed them? 16 A. I think with some significant information 17 associated with them. 18 Q. What kind of significant information? 19 A. Oh, how the test was developed, how the test 20 was related to something related to the job, those kinds 21 of issues. 22 Q. Do you know whether or not your lawyer had 23 copies of the tests that were used at Nucor Berkeley? 24 A. I'm not aware. I'm not aware. 25 Q. Did you ever ask him for those tests?</p>

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<p>1 A. Did not.</p> <p>2 Q. Okay. Did you review the report of Dr. Bradley</p> <p>3 and Dr. Fox in this case?</p> <p>4 A. You know, I've just looked -- I've just looked</p> <p>5 through it. That's the report about adverse impact?</p> <p>6 Q. Right. Right.</p> <p>7 A. I just looked through it. That -- I read it,</p> <p>8 but it's not an area in which I was asked to make a</p> <p>9 judgment.</p> <p>10 Q. Okay. So you haven't made any conclusion as to</p> <p>11 whether there is adverse impact in this case?</p> <p>12 A. Haven't been asked to.</p> <p>13 Q. Was test development discussed in the</p> <p>14 depositions that you reviewed?</p> <p>15 A. Well --</p> <p>16 MR. WIGGINS: Object to form as to -- if</p> <p>17 you could specify which tests we're talking about.</p> <p>18 BY MR. FARRIS:</p> <p>19 Q. The tests that were used at Nucor Berkeley</p> <p>20 during the selection procedures?</p> <p>21 A. I don't recall much about test development in</p> <p>22 the depositions I've read.</p> <p>23 Q. Okay. Did you review the report of Dr. Fines</p> <p>24 Welch in this case?</p> <p>25 A. I have not.</p>	<p>1 A. No. I was given -- I was given a set of -- a</p> <p>2 set of depositions and asked to come to a conclusion</p> <p>3 about those.</p> <p>4 Q. Okay. And you never came up with any questions</p> <p>5 about the selection process, for example?</p> <p>6 MR. WIGGINS: Object. He wasn't hired at</p> <p>7 that point. That's long ago.</p> <p>8 BY MR. FARRIS:</p> <p>9 Q. When you read the depositions in this case, did</p> <p>10 you come up with any questions that would have helped</p> <p>11 you to determine some of the information that you were</p> <p>12 missing in this case?</p> <p>13 MR. WIGGINS: Objection, that assumes there</p> <p>14 is information missing.</p> <p>15 MR. FARRIS: Well, he's testified already</p> <p>16 that he thinks there's other information that could have</p> <p>17 been provided to him.</p> <p>18 BY MR. FARRIS:</p> <p>19 Q. Is that correct?</p> <p>20 MR. WIGGINS: No. No. Object to form on</p> <p>21 that. You've suggested that there is something that</p> <p>22 might exist and he says he doesn't know.</p> <p>23 MR. FARRIS: Well, he's testified earlier</p> <p>24 that if he had more information, he might have been able</p> <p>25 to conduct his analysis more effectively.</p>
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<p>1 Q. Okay. Were you involved in any way in the</p> <p>2 depositions in this case?</p> <p>3 A. Were not.</p> <p>4 Q. Okay. Did you give any questions to Wiggins</p> <p>5 Childs to --</p> <p>6 A. Have not.</p> <p>7 Q. -- have asked during the depositions?</p> <p>8 A. Have not.</p> <p>9 Q. Do you think that it could have been helpful to</p> <p>10 your analysis to have questions that were asked during</p> <p>11 the depositions in the case?</p> <p>12 A. Questions that were asked by...?</p> <p>13 Q. Asked by Mr. Wiggins or by his firm?</p> <p>14 I mean, some of the information that you</p> <p>15 say you don't have, could you have gathered that through</p> <p>16 deposition testimony if certain questions had been</p> <p>17 posed?</p> <p>18 MR. WIGGINS: I'm going to object to the</p> <p>19 form. It assumes there is information that exists.</p> <p>20 BY MR. FARRIS:</p> <p>21 Q. Okay.</p> <p>22 A. Seems to me that's for y'all to decide.</p> <p>23 Q. Okay. So there's nothing that you would have</p> <p>24 -- no questions that you had during the course of your</p> <p>25 analysis that you raised to Mr. Wiggins, for instance?</p>	<p>1 MR. WIGGINS: What he's testified if the</p> <p>2 company had provided it, but we haven't shown that there</p> <p>3 is any "it."</p> <p>4 BY MR. FARRIS:</p> <p>5 Q. Has it been your practice in the past when</p> <p>6 you're working with clients to ask them questions about</p> <p>7 the job selection process?</p> <p>8 A. Absolutely.</p> <p>9 Q. Okay. And did you do this in this case?</p> <p>10 A. Did not.</p> <p>11 Q. Is it your testimony that the selection</p> <p>12 procedures at Nucor Steel Berkeley are not valid?</p> <p>13 A. Based on the -- based on the information I</p> <p>14 have, it would be difficult for Nucor to demonstrate</p> <p>15 validity.</p> <p>16 Q. Does that mean it's not possible for Nucor</p> <p>17 Berkeley to demonstrate validity?</p> <p>18 MR. WIGGINS: Objection, asked and</p> <p>19 answered.</p> <p>20 MR. FARRIS: That's not the same question,</p> <p>21 Bob.</p> <p>22 BY MR. FARRIS:</p> <p>23 Q. You can go ahead and answer it.</p> <p>24 A. Ask -- ask it again, if you would.</p> <p>25 Q. Okay. Does that mean that it's not possible</p>

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<p>1 that Nucor Berkeley selection procedures are valid?</p> <p>2 A. It -- you know, that's a real difficult to</p> <p>3 answer, I think. I would assume anything is possible.</p> <p>4 Q. Okay. So, then your answer is, yes, it is</p> <p>5 possible that they are valid?</p> <p>6 A. No. It's difficult to answer and -- that's</p> <p>7 difficult for me to answer in the absence of the data.</p> <p>8 Q. What data are you talking about?</p> <p>9 A. Data -- data related to jobs, job analysis</p> <p>10 data.</p> <p>11 Q. Okay. So if you had something like that</p> <p>12 hypothetically, is it possible you could prove the</p> <p>13 selection procedures are valid?</p> <p>14 A. There's a possibility of that.</p> <p>15 Q. Okay. If you had been hired, for instance, by</p> <p>16 Nucor Steel Berkeley to act as an expert in this case,</p> <p>17 do you think you could have gone in and conducted a job</p> <p>18 analysis?</p> <p>19 A. I wasn't -- I've not been hired by them.</p> <p>20 Q. Yeah. But I'm talking hypothetically.</p> <p>21 Do you think you could have gone in and</p> <p>22 conducted a job analysis?</p> <p>23 A. Oh, I feel competent to do that, yes.</p> <p>24 Q. Okay. What about a validation study?</p> <p>25 A. I certainly feel competent to do that.</p>	<p>1 BY MR. FARRIS:</p> <p>2 Q. Okay. So you've never seen any tests --</p> <p>3 A. I have not.</p> <p>4 Q. -- in this case.</p> <p>5 A. I have not.</p> <p>6 Q. So you're not making any opinion as to whether</p> <p>7 those tests are valid or not, if they exist?</p> <p>8 You're not making an opinion at all about</p> <p>9 the validity of any tests period in this case?</p> <p>10 A. I believe in my -- in my written report, I</p> <p>11 talked about one of the tests that was used that I think</p> <p>12 from a human resource perspective wasn't used in a</p> <p>13 particularly effective fashion.</p> <p>14 Q. Okay. How did you examine that particular</p> <p>15 test?</p> <p>16 A. I did not examine the test particularly, just</p> <p>17 examined the outcome related associated with the test.</p> <p>18 Q. It's on Page 6 of your report if you want to</p> <p>19 look at the bottom of the page.</p> <p>20 You're talking about a locally developed</p> <p>21 test?</p> <p>22 A. Right. Right.</p> <p>23 Q. From the Bell deposition?</p> <p>24 A. Uh-huh. Uh-huh.</p> <p>25 Q. Is it your opinion that that test is not valid?</p>
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<p>1 Q. Okay. What would you want from Nucor Steel</p> <p>2 Berkeley had you been hired by them to conduct a job</p> <p>3 analysis?</p> <p>4 A. Well, I would want whatever job analysis</p> <p>5 information they had. I would also like access to some</p> <p>6 subjective matter experts. I'd like some information</p> <p>7 based on the number of different sources that have been</p> <p>8 in contact -- number of different corroborating sources</p> <p>9 for that job to collect the job analysis information.</p> <p>10 Q. Have you conducted your own independent</p> <p>11 validation studies of any of the procedures used at</p> <p>12 Nucor Steel Berkeley?</p> <p>13 A. Have not. Have not.</p> <p>14 Q. Is it your expert opinion that any of the tests</p> <p>15 used for employee selection at Nucor Steel Berkeley are</p> <p>16 invalid?</p> <p>17 MR. WIGGINS: Objection, assumes there are</p> <p>18 tests.</p> <p>19 BY MR. FARRIS:</p> <p>20 Q. The tests that are used at Nucor Steel Berkeley</p> <p>21 have been provided to plaintiffs in this case.</p> <p>22 If that were the case, are you making any</p> <p>23 opinion about those tests?</p> <p>24 MR. WIGGINS: Objection on that</p> <p>25 representation. We know of no tests.</p>	<p>1 A. Again, I believe that the validity of that test</p> <p>2 needs to be demonstrated. And while -- I believe the</p> <p>3 validity of that test needs to be demonstrated.</p> <p>4 Q. Okay. So you're not saying it's not valid?</p> <p>5 A. Based on what I read, the individuals said that</p> <p>6 it hadn't been examined by a professional source.</p> <p>7 Q. Okay. But you didn't examine it either, right?</p> <p>8 A. I didn't examine it, no.</p> <p>9 Q. After you've read this deposition testimony</p> <p>10 that said there was a locally developed test, did you</p> <p>11 ask for a copy of that test?</p> <p>12 A. Did not. Did not.</p> <p>13 Q. Why not?</p> <p>14 MR. WIGGINS: Again, I'm going to object.</p> <p>15 It assumes this is, in fact, a test.</p> <p>16 MR. FARRIS: Well, it's in his report</p> <p>17 there's a locally developed test.</p> <p>18 MR. WIGGINS: Yeah. But he's told you</p> <p>19 earlier how he uses the word "test" and it's not the</p> <p>20 same way that we use the word "test."</p> <p>21 MR. FARRIS: He said that there was a</p> <p>22 locally developed test and that it was used in the -- in</p> <p>23 this and it was not -- it should have been evaluated by</p> <p>24 a professional test --</p> <p>25 BY MR. FARRIS:</p>

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<p style="text-align: right;">Page 98</p> <p>1 Q. I think you're referring to a test like a</p> <p>2 either a pen and paper or oral test; is that correct?</p> <p>3 MR. WIGGINS: That's why I have objected.</p> <p>4 You haven't established what you are talking about.</p> <p>5 BY MR. FARRIS:</p> <p>6 Q. What are you talking about when you talk about</p> <p>7 that test?</p> <p>8 A. I'm trying to remember. It was a test an</p> <p>9 individual developed and administered on his own, at</p> <p>10 least what my perception was in the depositions.</p> <p>11 Q. Okay. And can you describe what kind of test</p> <p>12 it was?</p> <p>13 A. No. I don't think there is enough information</p> <p>14 available.</p> <p>15 Q. Okay. And you didn't ask for any copies of</p> <p>16 that --</p> <p>17 A. Did not.</p> <p>18 Q. -- test?</p> <p>19 A. Did not.</p> <p>20 Q. Did you ever review any supervisor interview</p> <p>21 notes in this case?</p> <p>22 A. Did not.</p> <p>23 Q. Do you know if plaintiffs' attorneys had copies</p> <p>24 of those interview notes?</p> <p>25 A. Do not.</p>	<p style="text-align: right;">Page 100</p> <p>1 Q. And the employee handbook, I think?</p> <p>2 A. Correct.</p> <p>3 MR. WIGGINS: No, no. We sent him the</p> <p>4 compendium yesterday.</p> <p>5 THE WITNESS: That's right. The ones --</p> <p>6 MR. FARRIS: Yesterday.</p> <p>7 MR. WIGGINS: As soon as you sent it to us,</p> <p>8 we sent it to him.</p> <p>9 THE WITNESS: Yeah.</p> <p>10 BY MR. FARRIS:</p> <p>11 Q. Okay. But nothing else besides those</p> <p>12 materials?</p> <p>13 A. No.</p> <p>14 Q. You said you didn't retain any drafts of your</p> <p>15 report; is that correct?</p> <p>16 A. Do not.</p> <p>17 Q. Okay. And is that report entirely your</p> <p>18 original work?</p> <p>19 A. Oh, yes. Yes.</p> <p>20 Q. Okay. Have you developed any opinions in this</p> <p>21 case which are not contained in your report?</p> <p>22 A. No.</p> <p>23 Q. Did plaintiffs' counsel ask you to do any</p> <p>24 analysis which is not contained in your report?</p> <p>25 A. No.</p>
<p style="text-align: right;">Page 99</p> <p>1 Q. Did you ask plaintiffs' attorneys for any of</p> <p>2 those?</p> <p>3 A. Did not.</p> <p>4 Q. If you had reviewed interview notes in this</p> <p>5 case, could it have affected your opinion in this case?</p> <p>6 MR. WIGGINS: Objection. Let's show him</p> <p>7 the interview notes if you want him to answer these</p> <p>8 questions.</p> <p>9 A. Yes. I would need to answer that question with</p> <p>10 the information.</p> <p>11 BY MR. FARRIS:</p> <p>12 Q. Okay. Is it your testimony that Nucor Steel</p> <p>13 Berkeley doesn't have sufficient documentation to show</p> <p>14 whether the selection procedures are valid or not?</p> <p>15 A. From what I've seen, yes.</p> <p>16 Q. Okay. What do you base that opinion on?</p> <p>17 A. I've been -- I have not received information</p> <p>18 pertaining to a job analysis or at least not until</p> <p>19 yesterday pertaining to job analysis that have been --</p> <p>20 Q. And all the information you have received has</p> <p>21 been from plaintiffs' lawyers; correct?</p> <p>22 A. Correct.</p> <p>23 Q. And all you received from them is deposition</p> <p>24 transcripts?</p> <p>25 A. Correct.</p>	<p style="text-align: right;">Page 101</p> <p>1 Q. And did you on your own accord conduct any kind</p> <p>2 of analysis --</p> <p>3 A. Did not.</p> <p>4 Q. -- that's not contained in the report?</p> <p>5 A. Did not.</p> <p>6 Q. Is there any analysis that you still plan to</p> <p>7 do?</p> <p>8 A. If asked.</p> <p>9 Q. But is there anything specific in mind at this</p> <p>10 point?</p> <p>11 A. No. No.</p> <p>12 MR. WIGGINS: We are going to, Cary, I want</p> <p>13 you to know, ask him to look at the compendium. He</p> <p>14 doesn't even have the whole thing yet.</p> <p>15 MR. FARRIS: Okay.</p> <p>16 BY MR. FARRIS:</p> <p>17 Q. Did you consult with any other professors</p> <p>18 during the process of forming your opinions in this</p> <p>19 case?</p> <p>20 A. No.</p> <p>21 Q. Did you consult with anyone when drafting the</p> <p>22 report?</p> <p>23 A. No. No.</p> <p>24 Q. Okay. Did anyone else help you in any way with</p> <p>25 the report you drafted in this case?</p>

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<p>1 A. No. No.</p> <p>2 Q. And you said you read Dr. Jeanneret's report in</p> <p>3 this case; right?</p> <p>4 A. His report on my -- his report, I have.</p> <p>5 Q. Right.</p> <p>6 A. I have, yeah.</p> <p>7 Q. Okay. What do you disagree with specifically</p> <p>8 in his report, if anything?</p> <p>9 MR. WIGGINS: Object to the form of the</p> <p>10 question in terms of that's too broad, too much of a</p> <p>11 narrative.</p> <p>12 BY MR. FARRIS:</p> <p>13 Q. Why don't we go through Dr. Jeanneret's report</p> <p>14 and you tell me which of his conclusions on his -- it's</p> <p>15 on the second page of his report.</p> <p>16 It's on Page 5 of his report. Do you have</p> <p>17 that in front of you?</p> <p>18 A. Page 5, yes, I do. But I prefer if we could to</p> <p>19 go through differently instead of going through each one</p> <p>20 because there are points I believe that Professor</p> <p>21 Jeanneret made -- or Dr. Jeanneret made that I believe</p> <p>22 we disagree with -- we disagree on.</p> <p>23 Q. Okay. So how would -- how are you suggesting</p> <p>24 we go through it?</p> <p>25 A. Well, I'll follow your lead, if you --</p>	<p>1 Do you disagree with that?</p> <p>2 A. Based on the information I received, yes.</p> <p>3 Q. Okay. And that's based on the deposition</p> <p>4 transcripts?</p> <p>5 A. Yes.</p> <p>6 Q. And the complaint -- or the employee handbook?</p> <p>7 A. Uh-huh.</p> <p>8 Q. Did you do any kind of scientific analysis of</p> <p>9 the job relatedness of any of the --</p> <p>10 A. Did not.</p> <p>11 Q. Okay. He finds the promotion processes to be</p> <p>12 content valid.</p> <p>13 Do you agree or disagree with that?</p> <p>14 A. Let's see. It is, again, off the -- where we</p> <p>15 at? Which one?</p> <p>16 MR. WIGGINS: Where we at?</p> <p>17 BY MR. FARRIS:</p> <p>18 Q. It's on the first bullet. It's the second one</p> <p>19 here, content valid.</p> <p>20 A. Again, I can't come to that conclusion based on</p> <p>21 the information that I have.</p> <p>22 Q. Did you conduct your own validity study?</p> <p>23 A. Did not.</p> <p>24 Q. And the documents that you looked at to</p> <p>25 determine validity were the deposition transcripts --</p>
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<p>1 Q. Okay.</p> <p>2 MR. WIGGINS: And I want to make a general</p> <p>3 objection, and I won't restate it each time, but we've</p> <p>4 not prepared a rebuttable report to this as you know.</p> <p>5 MR. FARRIS: Right.</p> <p>6 MR. WIGGINS: And we haven't come prepared</p> <p>7 to do a rebuttal report live and in person.</p> <p>8 MR. FARRIS: I'm just asking him in general</p> <p>9 what he disagrees with in this report.</p> <p>10 MR. WIGGINS: Well, I mean, he'll tell you</p> <p>11 what he knows, but we haven't done a systematic rebuttal</p> <p>12 to this report.</p> <p>13 MR. FARRIS: Yeah, but it's his --</p> <p>14 MR. WIGGINS: The Court said don't do that.</p> <p>15 MR. FARRIS: Yeah, but it's his job today</p> <p>16 to testify as to what he -- you know, his opinions that</p> <p>17 he's formed in the case.</p> <p>18 MR. WIGGINS: And he's going to tell you</p> <p>19 what he tells you, but it's just going to be, you know,</p> <p>20 sort of fly by the seat of your pants sitting here in</p> <p>21 the middle of a deposition. It's not systematic and</p> <p>22 it's not in any way a rebuttal report.</p> <p>23 BY MR. FARRIS:</p> <p>24 Q. Okay. He found the Nucor Berkeley promotion</p> <p>25 processes to be job related.</p>	<p>1 A. They were.</p> <p>2 Q. -- and employee handbook?</p> <p>3 Okay. And he found the promotion processes</p> <p>4 to be different by department. Do you agree or disagree</p> <p>5 with that?</p> <p>6 A. I think that there were some that were</p> <p>7 different. Again, I looked at my job to comment on them</p> <p>8 as a whole.</p> <p>9 Q. Okay. So you didn't look at department by</p> <p>10 department?</p> <p>11 A. Not specifically, no.</p> <p>12 Q. Okay. So then it's possible that this</p> <p>13 promotion processes were different from one department</p> <p>14 to the next?</p> <p>15 A. Possible.</p> <p>16 Q. Okay. Did you find that when you were looking</p> <p>17 through the deposition transcripts? Did you find that</p> <p>18 the departments used different selection processes?</p> <p>19 A. I did. I found some inconsistencies, some --</p> <p>20 yes, some inconsistencies, some differences.</p> <p>21 Q. Okay. He found the promotion processes to be</p> <p>22 fair to all applicants?</p> <p>23 A. Not what I was asked to make a judgment about.</p> <p>24 Q. Okay. So you don't have an opinion as to</p> <p>25 whether it's --</p>

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<p>1 A. Don't have an opinion.</p> <p>2 Q. -- fair to all applicants?</p> <p>3 He found the promotion processes to be</p> <p>4 compliant with the uniform guidelines?</p> <p>5 A. I do not.</p> <p>6 Q. Okay. And why do you find them not to be</p> <p>7 compliant with the uniform guidelines?</p> <p>8 A. Again, I believe under 14C and 15C the -- both</p> <p>9 the technical requirements and the documentary</p> <p>10 requirements haven't been fulfilled.</p> <p>11 Q. Okay. So it's the violation in the uniform</p> <p>12 guidelines that you found then is relating to the</p> <p>13 documentation requirement?</p> <p>14 A. It's -- I have not seen any.</p> <p>15 Q. Okay. Is that -- but is that the only</p> <p>16 violation of the uniform guidelines you found?</p> <p>17 A. Off the top of my head, yes, it is.</p> <p>18 Q. Okay. And again, to determine whether Nucor</p> <p>19 Steel Berkeley complied with the uniform guidelines, you</p> <p>20 examined the deposition --</p> <p>21 A. That's right.</p> <p>22 Q. -- transcripts --</p> <p>23 A. Correct.</p> <p>24 Q. -- and the employee handbook?</p> <p>25 A. Correct.</p>	<p>1 with -- I would argue that -- I would argue that that's</p> <p>2 not a -- that's not a competent way to select people.</p> <p>3 Q. Okay. But you looked at the process as a</p> <p>4 whole; correct?</p> <p>5 A. I looked at --</p> <p>6 Q. You didn't look at it by department?</p> <p>7 A. Right. That's right. That's right.</p> <p>8 Q. So by department you've made no opinion as to</p> <p>9 whether they are consistent with the professional</p> <p>10 principles, the selection procedures they use?</p> <p>11 A. I've not been able to based on the information</p> <p>12 I received.</p> <p>13 Q. Okay. And you determined that Nucor Berkeley's</p> <p>14 promotion processes are not consistent with professional</p> <p>15 principles by looking again at the deposition</p> <p>16 transcripts and --</p> <p>17 A. That's right.</p> <p>18 Q. -- the employee handbook.</p> <p>19 A. That's right.</p> <p>20 Q. What professional principles do you feel that</p> <p>21 Nucor Steel Berkeley's promotion processes violate?</p> <p>22 A. Well, I believe the accessibility information.</p> <p>23 One of the things that I was surprised about when I read</p> <p>24 the depositions is that no one knew of the existence of</p> <p>25 or if there was, where it was kept. But even the -- I</p>
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<p>1 Q. Okay. Dr. Jeanneret found the promotion</p> <p>2 processes to be consistent with professional principals.</p> <p>3 Do you agree or disagree?</p> <p>4 A. I believe we disagree.</p> <p>5 Q. Okay. And on what do you base your</p> <p>6 disagreement?</p> <p>7 A. A number of different -- a number of different</p> <p>8 things. Let me try to gather my thoughts here. You</p> <p>9 know, I believe that the -- as I've said -- as I said in</p> <p>10 my report and, you know, you have access to it as well.</p> <p>11 That there is -- there's a lot of subjectivity involved</p> <p>12 in the process and a lot of -- you know, not very much</p> <p>13 -- not very much guidance by -- by the organization</p> <p>14 about the interviewing process about those kinds of</p> <p>15 things. I think there are a number of different things.</p> <p>16 For example, one of the things I talked</p> <p>17 about was my -- well, the one point issue. I think it's</p> <p>18 a standard error of measurement issue. Dr. Jeanneret</p> <p>19 saw it as a discrimination issue which is not what it</p> <p>20 is, but it's a standard issue in terms of measurement.</p> <p>21 Q. Which one point, I'm sorry, are you talking</p> <p>22 about?</p> <p>23 A. A decision that was made on a one point basis.</p> <p>24 A person said if a person had a 60, they would be</p> <p>25 different than a person who has a 61. I would argue</p>	<p>1 believe Ms. Barnhill.</p> <p>2 Q. The existence of what? I'm sorry.</p> <p>3 A. Of any kind of job descriptions, job analysis</p> <p>4 information.</p> <p>5 Q. Okay.</p> <p>6 A. So....</p> <p>7 Q. If Mrs. Barnhill did not know about the</p> <p>8 specifics of job analysis information, does that mean</p> <p>9 that none existed in the facility?</p> <p>10 A. It means that she's not privy to it and one</p> <p>11 would assume if she's a personnel official, that she</p> <p>12 would be privy to that information.</p> <p>13 Q. Is job analysis a technical term that's used or</p> <p>14 is that a common term?</p> <p>15 A. Oh, it's a rather common term.</p> <p>16 Q. Okay. Is that something that you would expect</p> <p>17 a department manager at a industrial facility to be</p> <p>18 familiar with?</p> <p>19 A. Oh, I sure would. I sure would.</p> <p>20 Q. When you have done consulting work in the past,</p> <p>21 did you ever explain what a job analysis was to the</p> <p>22 clients you were consulting with?</p> <p>23 A. Oh, absolutely.</p> <p>24 Q. And did they already know what a job analysis</p> <p>25 consisted of?</p>

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<p>1 A. Some do and some don't. Some do a good job on 2 job analysis and some don't do a very good job on job 3 analysis. 4 Q. Where would a department manager learn about 5 job analysis information? What source would they find 6 that in? 7 A. That's quite easily. Usually in the human 8 resources department. 9 Q. Okay. So usually the human resources 10 department would inform people of their job analysis? 11 A. Would have that kind of information available. 12 Q. Okay. Is there a generally available source 13 that is used in your field for definitions of job 14 analysis? 15 A. There is -- I mean, you find a definition of 16 job analysis anywhere, in many different sources, 17 textbooks. 18 Q. What source do you use primarily? 19 A. Oh, I use textbooks. I use the uniform 20 guidelines, I think are real specific about the -- what 21 the technical -- 22 Q. Okay. 23 A. -- technical requirements are of job analysis. 24 Q. Let's go back to your report. 25 A. Yeah.</p>	<p>1 of performance. And typically there aren't very many 2 objective performance indicators. 3 Q. Okay. So it's difficult to find an objective 4 indicator? 5 A. There are some, but there are not many. 6 Q. Okay. So you see more subjective indicators 7 then? 8 A. You sure do see subjective indicators. 9 Q. Okay. What about the fact of whether or not 10 you have been trained for a specific job, is that an 11 objective or subjective criteria? 12 A. Whether you've been trained or not? 13 Q. Uh-huh. 14 A. I believe you can answer that question 15 yourself. I mean, it's a -- whether a person has been 16 trained or not -- 17 Q. Uh-huh. 18 A. -- seems to me to be a relatively objective -- 19 but objective to the extent they were -- to the extent 20 that they were present at the training. Not objective 21 to the extent to how well the training has been done. 22 Q. Okay. But if they had training for a specific 23 job that would be objective? 24 A. It would be one. I'm not sure what it would 25 tell you, but whether you were present at the training</p>
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<p>1 Q. On Page 2, I believe. You said that -- it's on 2 the second page. 3 A. Okay. Second page. 4 Q. Second page of your report. I think it's on -- 5 A. Okay. Right here? 6 Q. Here you go. Second page. 7 A. Good. 8 Q. Second sentence from the top. It says, Nucor 9 procedures can be characterized by the subjective 10 combination of factors that are themselves often 11 subjective in nature; is that correct? 12 A. That's correct. 13 Q. What is your definition of objective? 14 A. Objective are characteristics that are -- you 15 know, there are -- well, objective are characteristics 16 to which there is an objective answer, to which there's 17 a -- whether you're present or not is an objective 18 question. 19 Q. Whether you're what or not? 20 A. Present or not. 21 Q. Okay. What are some other examples of 22 objective questions? 23 A. The area of performance evaluation has 24 basically struggled with this for many years, the 25 difference between objective and subjective indicators</p>	<p>1 or not, yes. 2 Q. Okay. What about the fact of whether or not 3 you have safety violations, would that be objective or 4 subjective? 5 A. An objective -- it would be kind of an 6 objective measure with the caveat that not a lot of -- 7 sometimes safety is not reported. Sometimes safety 8 violations are not reported, sometimes they are not -- 9 Q. Well, what if it is reported, would that be 10 objective? 11 A. It's a possibility. 12 Q. Okay. What's your definition of subjective? 13 A. We in the behavioral sciences have talked about 14 subjective measures for a long time. Subjective 15 measures are measures which there are not good objective 16 indicators of. Like if I were to ask what your 17 intelligence is, I can't -- there is not enough 18 objective indicator that I can use for that. It's 19 called an inferred construct. I would have -- I would 20 have to determine some way to measure that and infer it 21 from that measurement. 22 Q. Okay. 23 A. But one's leadership ability or one's ability 24 to innovate, those kind of things. 25 Q. Well, give me some other examples of what you</p>

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<p>1 would consider to be subjective.</p> <p>2 A. I've given you two, leadership ability, ability</p> <p>3 to innovate, teamwork orientation, self motivated, good</p> <p>4 work ethic, mechanically inclined, possession of</p> <p>5 computer skills.</p> <p>6 Q. Explain to me why these are subjective.</p> <p>7 A. Because there's not a real objective way to</p> <p>8 measure those. I mean, how would I -- how would I</p> <p>9 define team work oriented? Is it -- again, how would I</p> <p>10 define it. And basically how I would define would</p> <p>11 determine how it's measured. It's a difficult and not a</p> <p>12 very objective indicator.</p> <p>13 Q. Well, let's talk about teamwork then as a</p> <p>14 specific example. Is there any objective ways you could</p> <p>15 look at it to determine whether someone's team work</p> <p>16 oriented?</p> <p>17 A. There may be. I'm not familiar with any.</p> <p>18 There may be.</p> <p>19 Q. What about if someone has a bad discipline</p> <p>20 record, is that something you could use as an objective</p> <p>21 criteria to determine whether someone would be team work</p> <p>22 oriented?</p> <p>23 A. Without thinking about that, I'm not willing</p> <p>24 to --</p> <p>25 Q. So you don't have --</p>	<p>1 A. Seems to me it might be considered as such.</p> <p>2 Q. Okay.</p> <p>3 A. But again, I think you need to -- you need to</p> <p>4 know more about how those are recorded. Not every</p> <p>5 disciplinary activity is recorded by supervisors.</p> <p>6 Q. Okay. But if you -- if that's your criteria</p> <p>7 and you have one employee that has a suspension and one</p> <p>8 employee does not, would that be objective?</p> <p>9 A. I believe so.</p> <p>10 Q. All right. What about attendance, could that</p> <p>11 be considered an objective criteria?</p> <p>12 A. Absolutely it is.</p> <p>13 Q. What about job related tests?</p> <p>14 A. Job related tests, if they have been</p> <p>15 demonstrated to be job related and withstand scrutiny.</p> <p>16 Q. And then they could be objective; is that</p> <p>17 correct?</p> <p>18 A. Well, I don't know if they could be objective,</p> <p>19 but they could be good indicators.</p> <p>20 Q. Okay.</p> <p>21 A. Because, again, what you have is how do you --</p> <p>22 how do you operationally define these constructs.</p> <p>23 Q. If a selection procedure is subjective, is it</p> <p>24 subject to a formal validity analysis?</p> <p>25 A. Just because of its subjectivity?</p>
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<p>1 A. -- comment on that.</p> <p>2 Q. You don't have an opinion on that?</p> <p>3 A. No.</p> <p>4 Q. Is work experience subjective or objective?</p> <p>5 A. Oh, I think it's -- there are some parts of it</p> <p>6 that are objective.</p> <p>7 Q. Okay. Have you ever encountered an entirely</p> <p>8 objective employment selection process?</p> <p>9 A. No, it's difficult -- difficult to be</p> <p>10 objective. Difficult to find objective indicators.</p> <p>11 Q. Would you consider disciplinary history to be</p> <p>12 objective or subjective?</p> <p>13 A. You know, again, there's a difficulty in how</p> <p>14 that's measured. A lot of times disciplinary problems</p> <p>15 don't make it to the point of being recorded.</p> <p>16 Q. What would make it objective?</p> <p>17 A. Again, you're kind of asking me to speculate.</p> <p>18 Q. Okay. Well, let's say if you have a --</p> <p>19 COURT REPORTER: Just a minute.</p> <p>20 BY MR. FARRIS:</p> <p>21 Q. All right. We were talking about discipline.</p> <p>22 A. Uh-huh.</p> <p>23 Q. If the criteria is whether someone has a</p> <p>24 suspension on the record or not, would that be an</p> <p>25 objective criteria?</p>	<p>1 Q. Well, no. Just if it's subjective, can you do</p> <p>2 it, a validity analysis on it?</p> <p>3 A. Oh, absolutely you can.</p> <p>4 Q. How would you do that?</p> <p>5 A. How would I accomplish it?</p> <p>6 Q. Yes.</p> <p>7 A. There's a number of different ways. I could do</p> <p>8 -- I could do a content oriented validation or a</p> <p>9 construct oriented validation.</p> <p>10 You want me to go through the steps?</p> <p>11 Q. Well, and let's -- give me an example and then</p> <p>12 go through the steps. Let's say that -- let's say work</p> <p>13 ethic is the subjective criteria you're looking at.</p> <p>14 A. Uh-huh.</p> <p>15 Q. How would you conduct a formal validity</p> <p>16 analysis of that criteria?</p> <p>17 A. Well, how would I look and see if that's a good</p> <p>18 measure? Is that the question you're asking?</p> <p>19 Q. Well, yeah. How would you do it?</p> <p>20 A. What I would do is I would look and see --</p> <p>21 there's a number -- there is a way to statistically do</p> <p>22 it. I could look at other acceptable measures of work</p> <p>23 ethic. See if this related to that in some way.</p> <p>24 Q. Okay. So it's possible to do that then, to do</p> <p>25 a validity analysis of that?</p>

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1 A. There are some ways to look at those issues.
 2 Q. Okay. And you've said before that there are
 3 some objective measures used for personnel selection at
 4 Nucor Steel Berkeley; is that correct?
 5 A. I don't believe I said that. I said there are
 6 some objective indicators that are -- there are some
 7 subjective indicators.
 8 Q. Okay. And you've said that you've never found
 9 or rarely have ever found a purely objective system?
 10 A. Difficult.
 11 Q. Difficult to find?
 12 A. Uh-huh.
 13 Q. What about in this case, did you find a
 14 combination of objective and subjective factors?
 15 A. I found a combination of factors which I wasn't
 16 really sure how they were put together. It seemed to me
 17 as though there were a lot more operating in terms of
 18 the weighting of these factors that were easily
 19 determined.
 20 Q. Did you find that Nucor Steel Berkeley used
 21 entirely subjective factors?
 22 A. No. I think in some situations then, as I have
 23 said in my report, there were some objective criteria
 24 thrown in with subjective criteria.
 25 Q. Okay. Did the EEOC uniform guidelines forbid

1 management control?
 2 A. Perhaps.
 3 Q. Okay. You still haven't defined management
 4 controls. Do you have a definition of it?
 5 A. You know, again, I don't think there's a
 6 standard definition of it, but how much basic
 7 responsibility does management take for the effective
 8 management of human resources.
 9 Q. Okay. Did the uniform guidelines define
 10 management controls?
 11 A. Not to my knowledge.
 12 Q. Do the uniform guidelines require certain level
 13 of management control?
 14 A. Not to my knowledge.
 15 Q. Are you testifying that there is no management
 16 control at all at Nucor Steel Berkeley?
 17 A. I'm testifying there that is a lack of
 18 management control. I think that there should have been
 19 much more control over a lot of the -- a lot of the
 20 procedures that were used.
 21 Q. Okay. And that's based on your review again of
 22 the depositions --
 23 A. Of the depositions.
 24 Q. -- and the employee handbook?
 25 A. Correct.

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1 the use of subjective selection procedures?
 2 A. Do not.
 3 Q. Let's go to Page 3 of your report.
 4 A. Okay.
 5 Q. Yeah, it's that page. You said -- it's the
 6 last line of that page.
 7 A. Okay.
 8 Q. You say, I would suggest that the situation
 9 indicated a lack of management controls at many levels
 10 which resulted in a drift away from sound human
 11 resources management practices; is that correct?
 12 A. I did say that.
 13 Q. How do you define management controls?
 14 A. The -- you know, where is the data? Where is
 15 the data is the question. I think that's an important
 16 one. Or where is the data kept.
 17 Like I saw a lack of management control
 18 over any kind of job descriptions or job specifications
 19 that when people were asked if they existed.
 20 Q. Okay. So what would constitute management
 21 control over job descriptions?
 22 A. Just knowing where they are, having those --
 23 having those accessible.
 24 Q. What about if management had been involved in
 25 drafting the job descriptions, would that be a form of

1 Q. If department managers review candidates for
 2 employment selections, would that be a form of
 3 management control?
 4 A. Say it again. Ask again.
 5 Q. If the department managers -- let's say as an
 6 example, the beam mill department manager, if he reviews
 7 candidates for selection decisions, would that be a form
 8 of management control?
 9 A. Could be. Could be.
 10 Q. If there are training programs that are
 11 designed by management for employees, would that be a
 12 form of management control?
 13 A. I believe that's an empirical question which
 14 would best be answered the content of the training
 15 program.
 16 Q. Okay. But let's say that there is management
 17 designs a cross-training program for specific jobs.
 18 Isn't there some management controls since they are the
 19 ones that designed it?
 20 A. That's a smart training activity, I think, as I
 21 would describe that. It's not management taking control
 22 over a human resource practice at least.
 23 Q. What do you mean by smart training activity?
 24 A. It's just a good training activity for an
 25 organization to engage in.

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<p>1 Q. To have managers create a training program?</p> <p>2 A. No, no, no, no, no. No, no, no, no.</p> <p>3 Q. Okay. Explain. I'm not sure I understand what</p> <p>4 you mean.</p> <p>5 A. Let me go back. Here you ask me -- you need to</p> <p>6 ask me again.</p> <p>7 Q. Okay. If there are training programs that were</p> <p>8 created by management, would that be a form of</p> <p>9 management control?</p> <p>10 A. Again, it's all according to what the --</p> <p>11 according to the content of the training programs.</p> <p>12 Q. Okay. Would it be some form of management</p> <p>13 control?</p> <p>14 A. Could be. Could be. Again, based on the</p> <p>15 content of the training program.</p> <p>16 Q. How about if a group meeting is held between</p> <p>17 the department manager and his supervisors to discuss</p> <p>18 candidates, would that be a form of management control?</p> <p>19 A. It's some form of management control, but</p> <p>20 again, I mean, I -- it's some form of management</p> <p>21 control.</p> <p>22 Q. And isn't that what you do, you've said at</p> <p>23 Oklahoma University you meet with the other</p> <p>24 professors --</p> <p>25 A. That's right.</p>	<p>1 Q. We were talking about management controls,</p> <p>2 Dr. Buckley. What about panel interviews in which</p> <p>3 managements participates, would that be a form of</p> <p>4 management control?</p> <p>5 A. No, it's a good human resources practice.</p> <p>6 Q. But it's not a form of management control?</p> <p>7 A. No.</p> <p>8 Q. Why is that?</p> <p>9 A. I just don't -- I mean, again, it's a good</p> <p>10 human resource practice.</p> <p>11 Q. Well, what would you say then is a form of</p> <p>12 management control?</p> <p>13 A. Written policies and adherence to those</p> <p>14 policies. Written policies by management.</p> <p>15 Q. That's one form of management control?</p> <p>16 A. That's one form of good management control.</p> <p>17 Q. Okay. Do you have any other examples?</p> <p>18 A. I think that's a good one, written policies and</p> <p>19 adherence to it.</p> <p>20 Q. That's the whole example that you can --</p> <p>21 A. It's not the only example, but I think it's a</p> <p>22 -- you know, management -- well --</p> <p>23 Q. What about like safety meetings, for instance,</p> <p>24 where a manager is in charge of a safety meeting, would</p> <p>25 that be a form of management control?</p>
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<p>1 Q. -- to discuss --</p> <p>2 A. That's right.</p> <p>3 Q. -- the candidates?</p> <p>4 So that's -- you think that's a sound</p> <p>5 practice?</p> <p>6 A. I think it's -- it in conjunction with many</p> <p>7 other things may be considered a good practice.</p> <p>8 Q. Okay. But what you do at Oklahoma University</p> <p>9 when you meet with these candidates together, you</p> <p>10 consider that to be part of a sound selection procedure?</p> <p>11 A. When we meet with the candidate?</p> <p>12 Q. No. When you meet together to discuss</p> <p>13 candidates?</p> <p>14 A. I do.</p> <p>15 Q. Okay.</p> <p>16 VIDEOGRAPHER: I have 30 seconds left on</p> <p>17 this tape.</p> <p>18 MR. FARRIS: Okay. We'll go ahead and</p> <p>19 switch it.</p> <p>20 VIDEOGRAPHER: Off the record at 10:32 a.m.</p> <p>21 Ending Tape 2.</p> <p>22 (Recess from 10:32 to 10:34 a.m.)</p> <p>23 VIDEOGRAPHER: On the record at 10:34 a.m.</p> <p>24 Starting Tape 3.</p> <p>25 BY MR. FARRIS:</p>	<p>1 A. That's a good -- that's a good human resource</p> <p>2 activity.</p> <p>3 Q. But not a form of management control?</p> <p>4 A. A form of management control is the collection</p> <p>5 of data. The dissemination of data, written policies,</p> <p>6 ensuring adherence to written policies.</p> <p>7 Q. So what if they have a -- management has</p> <p>8 designed a written policy on safety, would that be a</p> <p>9 form of management control?</p> <p>10 A. I believe so, yeah.</p> <p>11 Q. Okay. Let's talk about on your report --</p> <p>12 A. Sure.</p> <p>13 Q. -- Page 5.</p> <p>14 A. Sure.</p> <p>15 Q. And it's the very last sentence on the page and</p> <p>16 going into the next page.</p> <p>17 A. Uh-huh.</p> <p>18 Q. You said that many managers and supervisors</p> <p>19 consider a different subset of criteria from among, 1,</p> <p>20 scores, the number of items missed on written hiring</p> <p>21 evaluation; 2, work history slash job experience; 3,</p> <p>22 technical skills; 4, attendance, safety records,</p> <p>23 disciplinary records, 5, job performance; 6, cross</p> <p>24 training and/or other job experiences; 7, job skills</p> <p>25 listed on the job posting; 8, interview results; and 9,</p>

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<p>1 numerous other idiosyncratic factors; is that correct?</p> <p>2 A. That's what it reads.</p> <p>3 Q. Okay. Don't these different subsets of</p> <p>4 selection criteria mean that there are differences in</p> <p>5 the selection procedures used across the departments?</p> <p>6 A. No, not necessarily. I mean, they could all be</p> <p>7 used for one or they could -- you know, only a subset</p> <p>8 could be used for some.</p> <p>9 Q. Well, if one is using part and another is using</p> <p>10 a different part, wouldn't that be a different selection</p> <p>11 procedure?</p> <p>12 A. It's just different factors perhaps in the</p> <p>13 selection process which would have to be demonstrated by</p> <p>14 the job analysis.</p> <p>15 Q. Okay. But this -- you're testifying in your</p> <p>16 report that managers and supervisors considered</p> <p>17 different subsets of criteria; right?</p> <p>18 A. That's right.</p> <p>19 Q. Okay.</p> <p>20 A. That's right.</p> <p>21 Q. So doesn't that mean that they are using</p> <p>22 different processes?</p> <p>23 A. Well, again, my problem with this is just the</p> <p>24 subjective combination of these factors. What's more</p> <p>25 important, a competent job analysis would indicate to us</p>	<p>1 experience?</p> <p>2 A. Given the appropriate set of circumstances.</p> <p>3 Q. And work history and job experience is</p> <p>4 something that you've used as a criteria --</p> <p>5 A. It is.</p> <p>6 Q. -- at the university; correct?</p> <p>7 Okay. Technical skills, do you think it --</p> <p>8 A. In the right set of circumstances.</p> <p>9 Q. Attendance, safety records and disciplinary</p> <p>10 records, that could be --</p> <p>11 A. In the right set of circumstances.</p> <p>12 Q. Okay. And when you say in the right set of</p> <p>13 circumstances, you mean that if it's -- that it could be</p> <p>14 important to making a selection decision?</p> <p>15 A. If it's demonstrated in the job analysis.</p> <p>16 Criteria aren't -- criteria aren't by themselves good</p> <p>17 nor bad, it's how they are used.</p> <p>18 Q. Okay. Job performance, same answer?</p> <p>19 A. Uh-huh.</p> <p>20 Q. And cross training and/or other job</p> <p>21 experiences?</p> <p>22 A. Uh-huh.</p> <p>23 Q. Job skills listed on the job posting?</p> <p>24 A. Uh-huh.</p> <p>25 Q. Okay. And then interview results?</p>
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<p>1 which of this information is more important. They're</p> <p>2 not all -- they are not all unit weighted.</p> <p>3 Q. Okay.</p> <p>4 A. They are not all unit weighted.</p> <p>5 Q. But as far as department by department, did you</p> <p>6 find that every department used the same exact selection</p> <p>7 procedures?</p> <p>8 A. I found that there was a lot of subjectivity in</p> <p>9 how these were used among the different managers.</p> <p>10 Q. Okay. Well, that wasn't really my question.</p> <p>11 What I was asking is if you found that each</p> <p>12 department used the exact same set of selection</p> <p>13 procedures?</p> <p>14 A. I don't remember that to be the case.</p> <p>15 Q. Okay. Would you consider the factors that you</p> <p>16 listed in this selection from your report to be</p> <p>17 important factors to consider in making promotions</p> <p>18 decisions?</p> <p>19 A. They may well be if demonstrated by job</p> <p>20 analysis.</p> <p>21 Q. Okay. So let's say scores on a written hiring</p> <p>22 evaluation, that could be considered something important</p> <p>23 to look at?</p> <p>24 A. Given the appropriate set of circumstances.</p> <p>25 Q. Okay. What about work history and job</p>	<p>1 A. Uh-huh.</p> <p>2 Q. Obviously numerous other idiosyncratic factors.</p> <p>3 I'm not sure exactly what that means.</p> <p>4 A. Well, just in one example is gut feeling. A</p> <p>5 gut feeling is an idiosyncratic factor that --</p> <p>6 Q. Right.</p> <p>7 A. -- you know and again, we all have different</p> <p>8 implicit personality theories.</p> <p>9 Q. And you said you saw that gut feeling possibly</p> <p>10 being used in one department?</p> <p>11 A. Well, I saw it in a number of different</p> <p>12 circumstances. I can't recall them.</p> <p>13 Q. Well, where -- I thought in your report you</p> <p>14 said it was one person, Paul Ferguson, who said that?</p> <p>15 A. Well, it may have been one but I think there</p> <p>16 were others who said they used some idiosyncratic</p> <p>17 factors.</p> <p>18 Q. But did anyone else say that they used gut</p> <p>19 feeling?</p> <p>20 A. Not gut feeling, no.</p> <p>21 Q. Okay. So other than No. 9, numerous other</p> <p>22 idiosyncratic factors, numbers 1 through 8 are things</p> <p>23 that could be under the right circumstances important to</p> <p>24 making the selections --</p> <p>25 A. Under the right circumstances.</p>

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<p>1 Q. Okay. Have you used any of those factors in 2 the selection processes you've designed for clients in 3 the past? 4 A. Oh, absolutely. 5 Q. You used 1 through 8? Have you used all of 6 them at some point? 7 A. I'm kind of on the spot here. I know I have 8 used some. The ones I have used have been ones that 9 have been demonstrated through a competently conducted 10 job analysis. 11 Q. Well, let's ask. Have you ever used scores on 12 a written evaluations before as a selection criteria? 13 A. Surely. 14 Q. What about work history and job experience? 15 A. Surely. 16 Q. Technical skills? 17 A. Surely. 18 Q. Okay. 19 A. These can all be used. 20 Q. All of them? 21 A. These can all be used. 22 Q. But I'm asking if you've used them in the past? 23 A. If I've used them in the past? Some I have and 24 some I may not have. I'm not much experienced with 25 attendance, safety records, disciplinary records.</p>	<p>1 for the electric company there, WOPS, I think was their 2 -- was their acronym. 3 Q. Okay. Have you done any job analyses for 4 industrial clients in the past? 5 A. No. 6 Q. Have you done any job analyses for steel 7 clients in the past? 8 A. Have not. Have not. 9 Q. Have you done any job analyses for 10 manufacturing clients in the past? 11 A. Some, not a whole lot. 12 Q. Do you remember what the examples were? 13 A. I don't, but I remember, you know, as a 14 graduate student doing some for diversified products in 15 Opelika, Alabama. 16 Q. Before you went to school and became a 17 professor, did you ever work in a industrial or 18 manufacturing environment? 19 A. I did work for a very short period of time in a 20 factory. 21 Q. What was that? What kind of factory was that? 22 A. Oh, gosh. It was a lock company in California, 23 but it wasn't the kind of work which I was cut out for. 24 It was much too difficult. 25 Q. Hopefully none of us are.</p>
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<p>1 Q. You're not familiar with those? 2 A. Oh, I know exactly what they are. 3 Q. I mean, I know you're familiar with them? 4 A. Yeah. 5 Q. But you haven't used those in the past? 6 A. No. No. 7 Q. Why in the past have you not used safety 8 records as a selection criteria? 9 A. Haven't had the opportunity to do a selection 10 for a job that was really that had a safety issue 11 associated with it. 12 Q. Okay. So you haven't done selection criteria 13 for an industrial type job before? 14 A. Some lower level mechanical type jobs, but not 15 in a -- not in a steel plant, if that's what you're 16 asking. 17 Q. Well, but just industrial jobs in general, 18 manufacturing jobs, let's say? 19 A. No. 20 Q. Okay. And when you said lower level mechanical 21 type jobs, what were those? 22 A. Just tree planters, entry level position. 23 Q. For what kind of company? 24 A. Oh, gosh. This was in Washington State many 25 years ago. I just developed a little selection program</p>	<p>1 A. Much too difficult for me so.... 2 Q. What were you doing there? 3 A. I pulled a series of -- I pulled a pallet of 4 ingots from Point A to Point B and repeated. 5 Q. That does sound fascinating. 6 A. It was -- it was using a lot my skills so.... 7 Q. Okay. We've talked about objectivity of some 8 of these factors, but the factors 1 through 8 in your 9 report, under the right circumstances could any of those 10 found to be objective? 11 A. Under the right circumstances, yes; but again, 12 interview results are not objective. I mean, there's a 13 difficulty in coming to an objective interview decision. 14 Q. Okay. That one was No. 8. 15 A. Right. 16 Q. What about -- we'll just go through them. What 17 about scores on written hiring evaluation, could that be 18 under the right circumstances found to be objective? 19 A. It would be difficult. Again, because that 20 whole issue of inferred constructs. Do we measure this 21 the same way, does mechanical skill mean the same to you 22 as it does to me. 23 Q. Okay. So it's possible that could be 24 subjective then? 25 A. Possible.</p>

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<p>1 Q. Okay. What about work history and job 2 experience? 3 A. Probably objective. 4 Q. Probably objective? 5 Technical skills. 6 A. Objective -- well, again, it's all according to 7 how they are measured, what do you give a person to test 8 and if I say your -- well, it's all according to how 9 they were measured whether they could be determined to 10 be objective or not. 11 Q. So it could be subjective or objective? 12 A. That's right. 13 Q. Technical skills? 14 A. That's right. 15 Q. And then No. 4, attendance, safety records and 16 disciplinary records. I think we have kind of gone over 17 that. 18 A. Yeah, attendance is pretty much a slam dunk. 19 But safety records and disciplinary records oftentimes 20 have problems that people don't keep those closely or 21 don't -- you know, what I consider a safety violation is 22 not considered a safety violation by you. 23 Q. Job performance, No. 5, objective or 24 subjective? 25 A. Job performance is a truly subjective</p>	<p>1 A. A difficult question. Difficult question. If 2 I did that, I would write the book and make millions, 3 but a difficult issue, I think, in terms of, you know, 4 what are the skills that determine, what is the adequate 5 measure of these skills. I think the crux of the issue 6 is there's a measurement issue, how do we measure 7 constructs, how do we measure things. 8 Q. Have you done that before for a client or 9 Oklahoma University -- 10 A. Have I -- 11 Q. Have you had to factor such as for job skills 12 listed on a job posting or an application? 13 A. Not that I can remember. Not that I can 14 remember. Job skills meaning something you do with your 15 hands or something or not the kind of work that I'm 16 typically involved in with my duties at Oklahoma. 17 Q. You never mention Dr. Bradley or Dr. Fox's 18 statistical report in this case in your report; is that 19 correct? 20 A. Yeah, I wasn't asked to -- wasn't asked to come 21 to a conclusion about that. 22 Q. But you said you have read it? 23 A. I've looked through it. 24 Q. And was it after you drafted your report? 25 A. It's after I drafted my report.</p>
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<p>1 indicator -- 2 Q. Okay. 3 A. -- so.... 4 Q. And you said you've used that indicator 5 previously? 6 A. Sure have. 7 Q. Okay. Cross training and/or other job 8 experiences? 9 A. You know, probably there is some objective 10 measure -- objectivity there. 11 Q. Okay. And then last one before interview 12 results, which you said is probably subjective is that 13 job skills listed on the job posting, is that objective 14 or subjective? 15 A. You know, again, all according to how they are 16 measured. All according to how they are measured. 17 Q. Okay. So there is no way to just look at job 18 skills and tell whether it's objective or subjective? 19 A. No. Again, it's all according to how they are 20 measured. 21 Q. And what do you mean by it's according to how 22 they are measured? 23 A. Well, again, how they were operationalized. 24 How they are operationalized. 25 Q. How would you make it objective?</p>	<p>1 Q. Okay. So you didn't rely on their report in 2 drafting your report? 3 A. Did not. Did not. 4 Q. Did you independently verify any of their 5 statistical findings? 6 A. Wasn't asked to. 7 Q. Okay. Do you consider yourself an expert in 8 the type of statistical analyses they have conducted? 9 A. I have some expertise in that area. I think 10 I'm fairly well trained through with my education at 11 Auburn University in statistics. 12 Q. Okay. What kind of statistics training did you 13 receive? 14 A. Stigometric theory, univariate, multivariate 15 statistics, yeah. 16 Q. And you've said before you don't have an 17 opinion as to whether there's a statistically 18 significant adverse impact in this case? 19 A. Haven't been asked to make that judgment. 20 Q. Do you disagree with -- I don't remember if you 21 said you had read Dr. Welch's report? 22 A. I haven't read it. 23 Q. You have not. Okay. 24 A. Have neither received it nor read it. 25 Q. Okay. Isn't it true that the uniform</p>

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<p>1 guidelines only require validation studies if an 2 employer's practice cause an adverse impact? 3 A. According to my readings. 4 Q. So if there is no adverse impact, there is no 5 requirement that it be validated? 6 A. It's always good practice to have validated 7 selection instruments. And the guidelines basically 8 suggest that you should have validated selection 9 instruments in the event that something is challenged. 10 Q. But there is no absolute requirement that you 11 do it unless there's adverse impact? 12 A. My reading of the guidelines is that there is 13 no absolute, but that they suggest it's good data to 14 collect. 15 Q. Okay. Are you familiar with the four-fifths or 16 80 percent rule contained in the uniform guidelines? 17 A. Sure, I am. 18 Q. As a professional in industrial and 19 organizational psychology, have you ever relied upon the 20 80 percent rule to reach your professional conclusion? 21 A. I've looked at it in a different number of 22 hypothetical examples and classes -- 23 Q. Okay. 24 A. -- to see how it -- to try to get students to 25 show how it works.</p>	<p>1 composition of a panel, does that have a influence on 2 the decision that's made -- on the interview decision 3 that's made by that panel. 4 Q. So have you ever used census data in any way in 5 your -- 6 A. Just a look at SMSA data in terms of 7 statistical metropolitan -- I forget what the acronym 8 means. 9 Q. Right. 10 A. You know, look at jobs in the area, 11 availability of people in the area, those kinds of 12 things. I have looked at those. Not in papers, but 13 I've looked at those in terms of my professional duties. 14 Q. Have you -- you said that you have some 15 statistical training? 16 A. Uh-huh. 17 Q. Have you ever used census data in relation to 18 any statistical study you conducted? 19 A. Not the type of data that I do -- type of 20 research that I do. 21 Q. Do you have any opinion as to whether it's a 22 sound practice to use census data and statistical 23 analyses? 24 A. It appears to me the question -- that it could 25 be used in appropriate situations.</p>
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<p>1 Q. Have you ever relied on it in a paper that you 2 have written? 3 A. You know, you're testing my memory. The paper 4 I wrote earlier in my career was a lot about legal 5 issues. I just don't remember the minutia of it. 6 Q. What about your -- you've written a lot of 7 journal articles I see from your CV? 8 A. Uh-huh. 9 Q. Did you rely on the four-fifths rule in any of 10 those articles? 11 A. None that -- no. No. No. None that I can 12 recall. 13 Q. Have you ever done any kind of demographic 14 studies? 15 A. Explain that more. What do you mean? 16 Q. We'll like using census data, for instance, 17 have you ever conducted any type of -- 18 A. Yeah, stock analysis or something like that 19 or -- 20 Q. Well, like availability analyses? 21 A. No, never had to, but I do use demographic. I 22 just finished a paper on relational demography in 23 interviewing -- in panel interviewing. 24 Q. Explain that. 25 A. It just means that the -- the racial</p>	<p>1 Q. What would be inappropriate? 2 A. You know, I would -- you would have to give me 3 a situation and I would determine whether I thought that 4 was appropriate or not. 5 Q. Okay. What variables will you consider to be 6 important when conducting a demographic study using 7 census information? 8 A. What variables? 9 Q. Right. 10 A. It would seem to me the -- I'm sorry. 11 Basically the representation of different population 12 subgroups. 13 Q. The -- I'm sorry. The -- 14 A. The representation of different population 15 subgroups. 16 Q. What about, you know, what counties you use, 17 would that be an important variable to look at? 18 A. Probably in some instances. 19 Q. What about job categories within the census 20 data, would that be important to examine? 21 A. I don't understand the question. 22 Q. Census data, as you know, I'm sure can be 23 broken down by job category; is that correct? 24 A. I'm not familiar enough with it to know that. 25 Q. Okay. So you're not familiar with the census</p>

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<p>1 data on --</p> <p>2 MR. WIGGINS: Occupational data.</p> <p>3 BY MR. FARRIS:</p> <p>4 Q. Are you familiar at all with that, with the</p> <p>5 occupational data?</p> <p>6 A. Probably not.</p> <p>7 Q. Occupational codes?</p> <p>8 A. No. Well, it's some but not much.</p> <p>9 Q. Okay.</p> <p>10 A. You know, again, not a big -- not a big area of</p> <p>11 my research interest.</p> <p>12 Q. What is your definition of an unstructured</p> <p>13 interview?</p> <p>14 A. An unstructured interview.</p> <p>15 Q. Uh-huh.</p> <p>16 A. An unstructured interview. I believe there is</p> <p>17 fairly standard definitions of it. An unstructured</p> <p>18 interview is where there is no agenda. You just go and</p> <p>19 talk about whatever comes to mind.</p> <p>20 Q. Okay. Did you review any deposition testimony</p> <p>21 in this case in which managers or supervisors stated</p> <p>22 that they had used written interview questions?</p> <p>23 A. I think I did. I think it was in the Bell</p> <p>24 deposition, if I remember correctly, but I'm not sure.</p> <p>25 Q. Do written interview questions create some</p>	<p>1 the time it gets around the room, the message is a real</p> <p>2 not -- is a quite a lot different.</p> <p>3 Q. So if you write down the interview questions,</p> <p>4 that creates some structure in the process?</p> <p>5 A. Well, if they are written down and they are --</p> <p>6 and the same questions are asked to the same -- to the</p> <p>7 individuals.</p> <p>8 Q. Okay. So, in that case, there would be</p> <p>9 structure in the interview process if they are written</p> <p>10 down and all the same questions are asked of each</p> <p>11 individual?</p> <p>12 A. That's right. That's right.</p> <p>13 Q. Okay. What about if after the interview is</p> <p>14 over and the supervisors get together and discuss the</p> <p>15 results of the interviews, would that lend some</p> <p>16 structure to the process?</p> <p>17 A. Well, interesting that you would ask that</p> <p>18 because an article that Dr. Jeanneret cited Campion, et</p> <p>19 al in '97. Basically what their group is moving toward</p> <p>20 an element of structure is the inclusion of panels -- is</p> <p>21 the inclusion of aggregation of data so....</p> <p>22 Q. What do you mean by a panel?</p> <p>23 A. A panel interview, an interview done by -- you</p> <p>24 know, when people get together and discuss the --</p> <p>25 Q. Well, by a panel interview, do you mean you</p>
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<p>1 structure in the interview process?</p> <p>2 A. If they are -- if -- they sure do. I mean,</p> <p>3 there is -- a structured interview is an interview where</p> <p>4 there's a definite set of questions that are asked of</p> <p>5 all candidates.</p> <p>6 Q. Did you review any deposition testimony in this</p> <p>7 case that demonstrates structure in the interview</p> <p>8 process at Nucor Steel Burkeley?</p> <p>9 A. I think -- I think in some instances there was</p> <p>10 some -- there was some structure. But, yes, I think in</p> <p>11 some instances there was some structure.</p> <p>12 Q. Can you recall any specific examples?</p> <p>13 A. I'm trying to remember because I had written</p> <p>14 something down here. You know, in Dr. Jeanneret's</p> <p>15 report, he talked about the Bell definition -- the Bell</p> <p>16 deposition. I'm sorry.</p> <p>17 My issue with this is there is -- there is</p> <p>18 no -- there is no writing down of questions anywhere.</p> <p>19 You know, there has -- there needs to be some writing</p> <p>20 down of questions, I believe, for it -- for this. The</p> <p>21 reason why I believe is because without that written</p> <p>22 down or some agreement on what the questions are,</p> <p>23 there's a lot of room for some interpretation. If I was</p> <p>24 to tell this gentleman something in his ear, so and so</p> <p>25 about X and have him pass it on to everybody else, by</p>	<p>1 have three people in one room interviewing one</p> <p>2 candidate?</p> <p>3 A. Three people at one time, but it's more than</p> <p>4 that.</p> <p>5 Q. Well --</p> <p>6 A. It's more than that.</p> <p>7 Q. What else would it be?</p> <p>8 A. Then there is some discussion about some of the</p> <p>9 -- some of the issues that are involved.</p> <p>10 Q. You're talking about after the actual interview</p> <p>11 is done?</p> <p>12 A. Yes. Oh, yes.</p> <p>13 Q. Okay. You're definition of a panel interview</p> <p>14 then is you have to have more than one person conducting</p> <p>15 the actual interview?</p> <p>16 A. Absolutely. In fact, some recent research</p> <p>17 talks about how four is a good number.</p> <p>18 Q. Okay. And if you do something along those</p> <p>19 lines then you have a more structured interview process</p> <p>20 you would say?</p> <p>21 A. No. But you have a better -- you have a better</p> <p>22 interview process, I believe. I think a woman named</p> <p>23 Pulakos has done some research and she says that it's</p> <p>24 important to have issues discussed after the interview</p> <p>25 because it reduces -- it increases the accountability of</p>

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1 the interviewers and, in addition, leads to more
 2 accuracy in interview decisions.
 3 Q. Okay. So you're talking about then the
 4 discussion after the interview?
 5 A. Yes.
 6 Q. Okay. So if you do that kind of discussion
 7 after the interview --
 8 A. Both. I mean, the panel interviews both. It's
 9 the panel interviewing with more than one person at one
 10 time and the discussion afterwards that --
 11 Q. Okay. But there are two separate things;
 12 right? I mean --
 13 A. They are. They are separate things that are
 14 considered in the panel.
 15 Q. Okay. And both of those parts of that process
 16 would create more structure in the interview process?
 17 A. I think they are helpful in terms of the
 18 structure.
 19 Q. Okay.
 20 A. They're items in addition to structure that
 21 should be considered.
 22 Q. And you -- what would those items be?
 23 A. Well, there again, a panel interview should be
 24 -- I think what we're -- my reading of the literature
 25 indicates to me that I think most people would agree and

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1 I consider myself, frankly, an expert on interviewing.
 2 That I would think that most people would say that the
 3 most optimal form of interviewing now is a structured
 4 panel interview.
 5 Q. Okay. How often do you see a structured panel
 6 interview process in the clients that you represent?
 7 A. Not very often at all.
 8 Q. And is it required under the uniform
 9 guidelines?
 10 A. Not -- only under competent human resource
 11 practice, in my opinion.
 12 Q. Okay. But it's not specifically required by
 13 the guidelines?
 14 A. I don't believe they address that.
 15 Q. And at OU do you do a panel interview?
 16 A. We sure do.
 17 Q. For every candidate that comes in?
 18 A. For the candidates who come for faculty
 19 positions, yes.
 20 Q. Okay. What about for the administrative
 21 positions, do you conduct panel interviews?
 22 A. We do, in fact.
 23 Q. For in each instance?
 24 A. In my experience, it's only been one. I mean,
 25 I've only hired one clerical person over the years.

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1 Q. And how did you conduct the interview in that
 2 situation?
 3 A. Three of us on a committee talked and asked a
 4 predetermined group of questions to a number of
 5 different candidates then afterwards discussed -- after
 6 each of those interviews, discussed the candidate then
 7 got together and discussed the overall -- the entire
 8 group of candidates.
 9 Q. Okay. And do you think that was a sound human
 10 resources practice?
 11 A. I think it's a sound practice, yeah.
 12 Q. Have you examined the interview processes used
 13 at Nucor Berkeley?
 14 A. From what I could see on the depositions,
 15 that's all I was able to.
 16 Q. That's all you were able to?
 17 A. Uh-huh.
 18 MR. FARRIS: I want to take a break.
 19 VIDEOGRAPHER: Off the record at 10:58 a.m.
 20 (Recess from 10:58 to 11:26 a.m.)
 21 VIDEOGRAPHER: On the record at 11:26 a.m.
 22 BY MR. FARRIS:
 23 Q. Okay. Back to the structured interview issue.
 24 That's what you were discussing before the break.
 25 A. Sure.

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1 Q. Did you in your review of the deposition
 2 testimony see any examples of where Nucor Steel Berkeley
 3 used panel interviews?
 4 A. I saw -- I saw a couple of examples that I can
 5 recall.
 6 Q. Okay. Can you have a valid selection process
 7 without using panel interviews?
 8 A. Oh, absolutely. Absolutely possible, but it
 9 needs to be demonstrated.
 10 Q. Okay. Could you have a valid selection process
 11 without structured interviews?
 12 A. The research shows -- I believe -- my reading
 13 of the research shows that structure adds to validity;
 14 the more structure you have, the better. And, in fact,
 15 I would go so far as to say even though Professor --
 16 Dr. Jeanneret disagrees with me, that I think a -- that
 17 panel interviews can be more valid than even structured
 18 interviews. The best alternative is a panel structured
 19 interview, I believe.
 20 Q. Okay. But can you have a valid selection
 21 process without structured interviews?
 22 A. Absolutely you can.
 23 Q. Okay.
 24 A. It's all in the demonstration.
 25 Q. Okay. And because panel interviews are the

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<p>1 preferred method, you've said, does that mean that all 2 the other forms of interviews are not valid? 3 A. Absolutely not. 4 Q. Okay. Let's talk a little bit about your 5 billing in this case. 6 What is your billing rate in this case? 7 A. \$450 dollars per hour. 8 Q. Is that for consulting or for deposition 9 testimony? 10 A. My deposition testimony will be double that, 11 \$900 an hour. 12 Q. Okay. What about for courtroom testimony? 13 A. I think it will be a little a bit more than 14 that. 15 Q. Okay. Is that the same billing rate that you 16 charge all your clients? 17 A. I do. I do. 18 Q. How much have you billed to date in this case? 19 A. Gosh, the last bill I sent -- and I don't have 20 a copy of it. My apologies. I think it's \$13,950 is 21 what I billed. 22 Q. And that's the total so far? 23 A. That's the total that I billed so far, yeah. 24 Q. Was any of part of that, any part of your fee 25 in this case based on the outcome of the case?</p>	<p>1 of mouth that people call you up? 2 A. Yeah. It's just word of mouth or, you know, a 3 company I'm familiar with or -- 4 Q. Is there any particular law firm that you've 5 done more work for than you have for others? 6 A. No, there is not. No, there is not. 7 Q. Your work as a consultant generally, have you 8 been called into situations where there's been an 9 adverse impact found and then it's your job to validate 10 the procedures? 11 A. No. 12 Q. Okay. 13 A. Not typical. 14 Q. What would you describe as the typical type of 15 work you do? 16 A. You know, again, in general, it's just people 17 who know that I have some expertise in human resource 18 management and want to see if I could add some value to 19 their company. 20 Q. You said that you are a professor in management 21 department and the psychology department? 22 A. I am. I am. 23 Q. Are you teaching classes now? 24 A. I do. I do. 25 Q. What do you teach in the management department?</p>
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<p>1 A. Gosh, no. No. No. Sorry. No. Gosh, no. 2 Q. And who do you send your bills to? 3 A. I sent my bill -- you know, in fact, I don't 4 remember. I think I send them to Ben DeGweck, an 5 associate of -- 6 Q. Did you bring your bill today, by the way? 7 A. I didn't. I didn't. 8 Q. Okay. But we could get a copy of it? 9 A. Yeah, absolutely can. 10 Q. Okay. Take us through the typical means of 11 generating income for an industrial psychologist. 12 How would you go about doing that aside 13 from your work as a professor? 14 A. Well, I mean, I don't want to speak to 15 industrial psychologists in general. I'll speak about 16 me. 17 Q. Uh-huh. 18 A. My primary duties are professor at the 19 University of Oklahoma. I'm the JC Penney endowed chair 20 for leadership studies, also professor in the management 21 department, professor in the psychology department. And 22 for me, I typically do \$10,000 a year maybe on average 23 consulting. But I don't go out searching for 24 consulting. 25 Q. Okay. You said earlier it's just kind of word</p>	<p>1 A. I teach principals in management. 2 Q. What level of class is that? 3 A. It's a junior level class. 4 Q. Okay. What about in the psychology department? 5 A. I don't have a teaching appointment in the 6 psychology department. My appointment is to mentor 7 their doctoral students. 8 Q. Okay. Mentoring their doctoral students, what 9 kind -- are any of their -- the doctoral students you 10 mentor, are they industrial psychologists? 11 A. They are all industrial psychologists. 12 Q. Okay. 13 A. I am an industrial -- I am -- I have a Ph.D. in 14 industrial psychology. 15 Q. Right. Okay. You have your Ph.D. in 16 industrial organizational psychology. 17 Do you have any degrees in statistics? 18 A. I do not. 19 Q. What is your understanding about how the field 20 of industrial and organizational psychologist view the 21 80 percent rule as a determinant of adverse impact? 22 A. Again, ask me that again so I -- I'm just 23 trying to buy a little time to think here. 24 Q. Sure. Sure. 25 What is your understanding about how the</p>

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<p>1 field of industrial and organizational psychologists 2 view the 80 percent rule as a determinant of adverse 3 impact? 4 A. Yeah. To tell you the truth, I haven't thought 5 of it much. I know there are a number other ways to 6 look at that issue instead of just the 80 percent rule. 7 I have not thought of whether that -- I have not made a 8 personal evaluation whether that's a good thing or not 9 so good thing and I'm not familiar with the discussion 10 that's gone on in the field about it. 11 Q. Okay. So you said you read all the journals 12 and keep current -- 13 A. I try to read the journals. But -- I try to 14 read the journals. 15 Q. Okay. But you're not familiar with any 16 articles on that issue? 17 A. No, not in the journals that I looked at. 18 Q. Okay. You said that there are other means 19 besides the 80 percent rule. 20 Is statistical significance one of those 21 means? 22 A. Well, I mean, you look at confidence intervals, 23 you look at a number of other different things, stock 24 analysis. There's just a number of different ways, I 25 think. And which one is better, I just don't know.</p>	<p>1 rule? 2 A. I think that would be a fair -- a fair 3 evaluation. 4 Q. Okay. Are you aware of the flaws in using the 5 80 percent rule statistically? 6 A. No. 7 Q. So you haven't read any literature at all about 8 potential flaws -- 9 A. Have not. 10 Q. -- in using the 80 percent rule? 11 A. Have not. 12 Q. Do you know if the 80 percent rule has any 13 basis in psychometrics? 14 A. Do not. 15 Q. You don't know or -- 16 A. Do not know. Do not know. 17 Q. And you haven't thought about it yourself so 18 far? 19 A. No. I think of other things. 20 Q. All right. Here's a hypothetical question for 21 you. Let's say you're hired by one of your clients to 22 do some consulting work for them and you're hired to 23 conduct an adverse impact study on promotions decisions. 24 In that example, if you have the 25 availability of census data or internal company data on</p>
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<p>1 That's more for lawyers to decide. 2 Q. Well, isn't statistical significance a 3 preferred method among the -- in the field of industrial 4 and organizational psychologists? 5 A. I believe so. I believe so. 6 Q. And for determining adverse impact? 7 A. I believe so. 8 Q. Okay. What about among statisticians, is 9 statistical significance a preferred method for 10 determining adverse impact? 11 A. I'm not sure. You probably have to ask a 12 statistician. 13 Q. Okay. Well, you said you were trained in the 14 field of statistics. 15 A. I make no claim to be a statistician, but I am 16 well trained in statistical areas. 17 Q. Okay. And is -- do you read any journals, any 18 statistical journals? 19 A. No. No, I've not. I do not read psychometrica 20 or those journals because I find they are just formula 21 anymore and not really any impact on statistics. A 22 number of the mainline management journals now have 23 statistical oriented articles in them. 24 Q. Okay. So you're just not familiar then with 25 the field of statisticians how they view the 80 percent</p>	<p>1 selections, which set of data would you use? 2 A. I think frankly if you have -- if you have 3 both, I would use both. 4 Q. You would use both? 5 A. If you had both, I would use both. 6 Q. Okay. Why would you use both? 7 A. Well, I think, again, I think one of the 8 mistakes we make in behavioral sciences is we can't rely 9 on single course data. Can't rely on single source 10 data. 11 Q. So you think that external census data would be 12 just as accurate to use as the actual data on the 13 promotion decisions that were made in the company? 14 A. Well, again, I mean, it's an empirical question 15 given the case. You're asking for a hypothetical. I 16 don't know a lot of the background of it. 17 Q. Would it be your practice commonly to use 18 census data when you have available to you actual 19 promotions data from within a company? 20 A. Again, my judgment would be that the actual 21 promotion data in the company would be more important. 22 Q. You talked earlier about the concept of 23 implicit personality -- 24 A. I did. 25 Q. -- when you were talking about subjectivity?</p>

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<p>1 A. I did.</p> <p>2 Q. How does daily contact influence the implicit</p> <p>3 personality issue?</p> <p>4 A. Well, I think -- again, just to reiterate, what</p> <p>5 implicit personality theories are we all have a</p> <p>6 different idea of what constitutes good and bad</p> <p>7 behavior. What's acceptable and what's not, what's good</p> <p>8 and what's not so good. I would think the more -- the</p> <p>9 more exposure you have to people, the more those are</p> <p>10 shown to either be correct or incorrect.</p> <p>11 You've been around professors a lot as a</p> <p>12 person who has a relatively scholarly past in terms of</p> <p>13 your law training. You know what a good professor is.</p> <p>14 You didn't know that when you first got there, but after</p> <p>15 you went through your seven or eight years, you probably</p> <p>16 had a good idea what a good professor was.</p> <p>17 Q. When you mentioned Fisk -- is that correct?</p> <p>18 A. Fisk -- I don't think I mentioned Fisk.</p> <p>19 Q. Fisk research? You didn't mention Fisk? Okay.</p> <p>20 A. No, no, no. Who I mentioned and -- yes, Susan</p> <p>21 -- that's right, Susan Fisk. That's right.</p> <p>22 Q. Okay.</p> <p>23 A. That's right. Susan Fisk, I think her name is.</p> <p>24 Q. Do you know what her conclusions were regarding</p> <p>25 the influence of daily contact on implicit personality</p>	<p>1 analysis?</p> <p>2 A. I've read about it being used and how it's been</p> <p>3 used and -- but that's my exposure. That's the extent</p> <p>4 of my exposure to it.</p> <p>5 Q. What do you use rather instead of the PAQ for</p> <p>6 your job analysis?</p> <p>7 A. Well, there is number of different -- different</p> <p>8 options. The one that I've been -- I think is the best</p> <p>9 or not the best. The best is bad. The one that I think</p> <p>10 that I have been more particularly wanted to use is</p> <p>11 something called Functional Job Analysis by Sydney Fein,</p> <p>12 I think his name was. I'm not sure. But he talks it.</p> <p>13 In fact, there is a fourth category that's</p> <p>14 been added. Data, people, things, and now, information.</p> <p>15 You know, what's a person's relation to data, people or</p> <p>16 things.</p> <p>17 Q. And that's what you typically use when you</p> <p>18 conduct a job analysis?</p> <p>19 A. Well, that's what I believe is one of the</p> <p>20 better methodologies. I use different methodologies.</p> <p>21 There is different ways to collect job analysis</p> <p>22 information. There is not one job analysis technique.</p> <p>23 Q. Okay. Do you have any opinion as to whether</p> <p>24 the PAQ is a good job analysis technique?</p> <p>25 A. You know, that's -- again, I would imagine it's</p>
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<p>1 issue?</p> <p>2 A. I don't. I wouldn't hazard a guess.</p> <p>3 Q. Okay. What about her conclusions regarding</p> <p>4 individuating information?</p> <p>5 A. Individuating information? I'm not sure I</p> <p>6 understand what that means, but I believe I feel more</p> <p>7 comfortable if you asked her.</p> <p>8 Q. Okay. Well, the base question, doesn't the</p> <p>9 Fisk research show that when you have individuating</p> <p>10 information such as the daily contact information that</p> <p>11 stereotypes tend to go away?</p> <p>12 A. Yeah. That I'm not sure of. That I have not</p> <p>13 read so --</p> <p>14 Q. Okay. Are you familiar with the use of the</p> <p>15 position analysis questionnaire, the PQA -- PAQ, rather?</p> <p>16 A. PAQ, somewhat. Some. Some.</p> <p>17 Q. Have you ever used it before?</p> <p>18 A. Have not. Have not. But every -- every</p> <p>19 graduate student must admit that they had some exposure</p> <p>20 to it.</p> <p>21 Q. But you have never used it in any --</p> <p>22 A. Have not.</p> <p>23 Q. -- job analysis in the past?</p> <p>24 A. Have not.</p> <p>25 Q. Have you seen it used by others in job</p>	<p>1 been around for a long time so a lot of people probably</p> <p>2 think quite highly of it -- quite complimentary.</p> <p>3 Q. Are you familiar with the Onet?</p> <p>4 A. I'm a little bit familiar with that. I know</p> <p>5 there's been a couple articles in Personnel Psychology</p> <p>6 about it, but I just -- I haven't looked at them.</p> <p>7 Q. Okay.</p> <p>8 A. I believe you might should ask Professor --</p> <p>9 Dr. Jeanneret. I think he's had a lot more to do with</p> <p>10 that.</p> <p>11 Q. Do you have a general description of what the</p> <p>12 Onet is?</p> <p>13 A. Do not. Do not.</p> <p>14 Q. Are you familiar with ISO-9000 job analysis?</p> <p>15 A. Well, I don't think it's job analysis. I think</p> <p>16 ISO are performance standards, aren't they? They are</p> <p>17 not job analyses, I don't think.</p> <p>18 Q. Is that how you would describe them?</p> <p>19 A. That's how I describe ISO type issue -- you</p> <p>20 know, the ISO -- I mean, there has been so many numbers</p> <p>21 -- there have been a couple numbers over time. I look</p> <p>22 at the Moore's performance standards not his job</p> <p>23 analysis.</p> <p>24 Q. Have you used ISO-9000 before?</p> <p>25 A. Have not. Have not.</p>

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<p>1 Q. If you had done work in the past in a more 2 industrial manufactured environment, do you think you 3 would have had more cause to use the ISO-9000? 4 A. I think -- you know, frankly, it's probably one 5 piece of the puzzle -- a rudimentary piece of the 6 puzzle. It gives you standards and benchmarks. It 7 doesn't give you anything about the criticality of the 8 job or how you determine that. 9 Q. You described it as rudimentary. What do you 10 mean by that? 11 A. I think it requires a lot more supplementary 12 information to be useful. 13 Q. What does ISO-9000 contain? 14 A. Again, I don't present myself as an expert on 15 that. I always think of it as a bunch of different 16 performance benchmarks. 17 Q. Okay. So you're not -- 18 A. Just standards, not -- not really descriptors 19 of the job, just standards. 20 Q. Have you looked at examples of ISO-9000 before? 21 A. Not to a great extent. 22 Q. Okay. But you still think it's just kind of a 23 rudimentary -- 24 A. Yeah. I mean, that's how I would describe it. 25 Q. What are you basing that on if you haven't</p>	<p>1 Are you familiar with his research there? 2 A. You know, I'm trying to think about it. You 3 know, I just -- you must be able to tell from my vitae. 4 I'm a Bernardin student. In fact, I talked -- I seen 5 Professor Bernardin within the last three weeks. 6 Most of his articles that I'm familiar with 7 are the training of people to facilitate the accuracy 8 with which performance evaluation is done. Now, give me 9 the -- give me the specific article in question and I'll 10 try to remember it because I am familiar -- mostly 11 familiar with his work. 12 Q. I'm not sure that I have the specific article 13 but -- 14 A. Well, if you can give me the citation, I'll 15 read it and I'll tell you what I think. John's a person 16 -- and I'll call John and tell you what he thinks. 17 Q. Have you been critical of some of his work in 18 the past or have you -- 19 A. Professor Bernardin, I think, is one of the 20 most important scholars in human research management in 21 the country. Have I been critical of his work? We -- 22 he's talked about my work and I've talked about some of 23 his work as maybe not optimal, but he kind of laughs at 24 a thing or two that I've done but he's still a wonderful 25 scholar.</p>
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<p>1 looked at -- 2 A. Based on -- 3 MR. WIGGINS: Object to form. 4 Go ahead. 5 A. Based on what I think about the -- it is. And 6 I think to my best recollection, it's more standards 7 than just straight forward job analysis information. 8 BY MR. FARRIS: 9 Q. What kind of -- did you ever receive any kind 10 of training on the ISO-9000? 11 A. Have not. Have not. 12 Q. Is it appropriate for people in industrial 13 engineering to perform job analysis in industrial jobs? 14 A. Absolutely. 15 Q. Ask you about another name you mentioned -- 16 A. Yeah, please. 17 Q. -- earlier. Either Dr. or Professor Bernardin? 18 A. Bernardin. 19 Q. Bernardin? 20 A. Bernardin. 21 Q. And -- 22 A. Wonderful man. 23 Q. What were Bernardin's conclusions on 24 subjectivity in performance appraisals with regards to 25 race?</p>	<p>1 Q. Have you read any of his conclusions on the 2 influence of subjectivity in leading to discrimination? 3 A. No, I have not. No, I have not. 4 MR. WIGGINS: Object to -- I want to object 5 to form on the last question, but go ahead. 6 BY MR. FARRIS: 7 Q. Are you familiar with the research of Arvy and 8 Murphy? 9 A. And Kevin Murphy. Again, give me the article. 10 Q. I don't have an article. I'm just asking if 11 you're familiar with the research of those two 12 individuals? 13 A. I'm familiar with some of it. More, in terms 14 -- Rich Arvy, I think, of more in terms of some job 15 satisfaction research he's done in the last couple years 16 in terms of job satisfaction being a genetic type 17 variable. I'm just not -- 18 Q. Well, they've -- I don't have a specific 19 article, but they've made some conclusions on 20 performance appraisal systems and subjectivity. 21 Are you familiar at all with that work? 22 A. I'm not. I'm not. 23 Q. Okay. You said earlier that you had written an 24 article on the legal aspects of discrimination? 25 A. Yeah. It was -- it was an article a long time</p>

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1 ago and I'm not sure if it ever got published. I kind
2 of lost track of it. I know it got accepted by a
3 journal called Public Personnel Management, but I don't
4 think -- I'm not sure it ever came out to be real honest
5 with you. I think Professor Bernardin -- it was when I
6 worked with Professor Bernardin. And he -- he may have
7 well have -- again, I haven't thought about it for
8 years. He may have pulled it out of retirement -- out
9 of that cycle for them because he then did a personnel
10 psychology article on the legal issues surrounding
11 performance evaluation.

12 Q. Uh-huh.

13 A. So that may be what happened to it. I'm not
14 sure it's available to be honest.

15 Q. So it was Public Personnel Management was the
16 journal?

17 A. That's right.

18 Q. Do you recall how long ago it was?

19 A. Oh, gosh. This is early Eighties.

20 Q. Early Eighties.

21 Okay. If it's not available through them,
22 is there any other source we could get a copy of that?

23 A. I can't imagine.

24 Q. You wouldn't have a copy of it --

25 A. I can't imagine where it would be around.

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1 Q. -- somewhere?

2 A. No. It was about performance appraisal in
3 police organizations and legal issues associated with
4 that. It wasn't -- it wasn't my finest work so....

5 Q. What about Dr. Bernardin, would he have a copy?

6 A. I can't imagine he would. He's a majorly -- a
7 major caregiver now not a --

8 Q. Okay.

9 A. He's a -- his scholarly pursuits are limited.

10 Q. What issues did you discuss with Mr. Wiggins
11 today before your deposition?

12 A. Just kind of what I could expect in terms of --
13 you know, because I've never done this before. He just
14 said tell the truth. You know, just be -- be
15 comfortable, be yourself, and that's what I've tried to
16 be.

17 Q. Did you discuss Dr. Jeanneret's report at all?

18 A. Just a little bit. Not a whole lot. Not a
19 whole lot. I'm trying to -- any of the things that we
20 -- you know, I just -- some of the things that we
21 disagree upon, I think I may have brought them up to
22 Mr. Wiggins.

23 Q. What were some of those items?

24 A. Well, I think that one of the things that
25 Dr. Jeanneret had said which I think is really important

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1 is that Nucor wouldn't have a stake in hiring people who
2 weren't the best people. And that's -- you know, I
3 don't think that's an issue here. I mean, that's not an
4 issue of importance here. Motivation is not the issue.
5 Intent is not the issue. It's -- it's more an issue of,
6 you know, what the impact has been. So that was -- that
7 was one thing. I think there are -- there are some
8 others if you would like me to go through.

9 Q. Sure.

10 A. I'm not sure if --

11 Q. Let me ask you about the last thing. You
12 said --

13 A. Yeah.

14 Q. -- intent is not the issue. What did you mean
15 by that?

16 A. Well, it's -- you know, one of the things --
17 intentional -- it's not important to be -- to
18 demonstrate any kind of intentional discrimination. I
19 mean, intent is not the issue. What we intend to happen
20 or how motivated we are to hire good people. It's
21 whether our selection procedures are such that they can
22 be validated to have hired the -- you know, to be solid
23 selection devices.

24 Q. So you haven't looked at intentional
25 discrimination in this case?

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1 MR. WIGGINS: Object to form.

2 A. No, I have not been asked to do that.

3 BY MR. FARRIS:

4 Q. Okay. Did you discuss Dr. Jeanneret's
5 compendium at all before today's deposition?

6 A. The only thing that we discussed was that
7 because I said to Mr. Wiggins that I got part of it. I
8 left -- I left my office at about 11:00ish or something
9 like that to make sure I got to the airport on time.
10 And I was told another group was coming. So I got some
11 of them and I looked at them, but -- and I certainly
12 didn't have enough time to come to any kind of
13 conclusion about those.

14 Q. Okay.

15 A. I did notice the date was a little bit -- you
16 know, kind of a --

17 Q. You said you had a few other issues that you
18 wrote down that you talked about?

19 A. Well, I don't know if we talked about them, but
20 I think there are some issues that -- you know, that
21 I've got with the report done by Dr. Jeanneret. He
22 wants to talk about how I -- you know, how I don't ask
23 for information. And again, I believe the affirmative
24 obligation rests with y'all to provide data to the
25 plaintiffs' attorney. You know, I shouldn't be expected

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<p>1 to ferret out the data. I mean, the scientific process 2 is not me finding out the data, it's simply presenting 3 the data and me kind of trying to refute it or look at 4 it.</p> <p>5 You know, complete control, we have a 6 difference of opinion on what control is. I look at 7 control as data keeping and record keeping. In my 8 opinion, there has been no real monitoring of the 9 process. You know, Professor -- I'm sorry. I'm sorry, 10 Dr. Jeanneret. I keep wanting to call you professor. 11 I'm so sorry.</p> <p>12 MR. JEANNERET: I'm a professor, too. 13 That's okay.</p> <p>14 THE WITNESS: Okay. I'm so sorry.</p> <p>15 A. You know, it talks about how -- I'm trying to 16 think. Gosh, consistency with an applicant. And I'll 17 give you a copy of all of this.</p> <p>18 Again, I didn't look at job analysis 19 information. I don't believe it's my obligation. I 20 believe you have an affirmative obligation to provide 21 that data. You know, the whole subjective issue is -- 22 and I think if we were to talk, and I don't want to talk 23 for Dr. Jeanneret, but we probably agree with this. You 24 know, you want to reduce subjectivity in evaluation, of 25 course, people make subjective decisions, but in the</p>	<p>1 MR. WIGGINS: Objection.</p> <p>2 A. Well, I believe -- again, I'll just repeat it 3 again. I believe that you all have an affirmative 4 obligation to provide the data.</p> <p>5 BY MR. FARRIS:</p> <p>6 Q. Okay.</p> <p>7 A. Not for me to go and get it. I mean, it's 8 not --</p> <p>9 Q. Do you have any obligation to get data from the 10 attorney from whom you're consulting?</p> <p>11 A. Again, I mean, that's something that you might 12 ask -- that you might ask them. I think the scientific 13 methodology, at least to me, means that I am looking at 14 the reputation of data not the collection of data to 15 kind of refute someone else. I just want to look at 16 their data. I made a career of relooking at other 17 people's data and seeing what -- you know.</p> <p>18 Q. But sure. Do you think it's a good practice to 19 rely solely on what the attorneys give you and only 20 analyze that without asking for any additional data?</p> <p>21 A. Well, again, I believe that --</p> <p>22 MR. WIGGINS: Objection. I want to object 23 to that. That's assuming there is additional data, and 24 I think the record will show that your answers to 25 interrogatories there are none.</p>
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<p>1 absence of management direction -- in the absence of 2 direction, there's a lot more -- there's a lot more 3 subjectivity that becomes involved. And I think that's 4 -- that's an important issue.</p> <p>5 Oh, my. Oh, my. You know, and again, I 6 didn't take the opportunity to review the tests that 7 were used in the process and I think, you know, 8 Dr. Jeanneret did. He finds the test content to be job 9 related. Well, I just say that needs to be scrutinized 10 by outside experts. I mean, it just -- you know, and I 11 respect Dr. Jeanneret quite a bit, a well-known 12 individual, but I'm not willing to just because he said 13 it's so. I mean, I think I would like others to 14 scrutinize that data. Gosh. Oh, and again, you know, 15 there is -- well, I mean, I could go on but --</p> <p>16 BY MR. FARRIS:</p> <p>17 Q. That's all right. I just got a couple of 18 follow-ups on that.</p> <p>19 A. Yeah. Go ahead. Go ahead.</p> <p>20 Q. You said it's not your obligation to ferret out 21 the data from Nucor?</p> <p>22 A. That's right.</p> <p>23 Q. Do you believe as an expert that you have any 24 obligation to ask for certain data from the attorneys 25 for whom you're consulting?</p>	<p>1 BY MR. FARRIS:</p> <p>2 Q. Okay. You can go ahead and answer.</p> <p>3 A. Again, I'll just repeat what I said. There is 4 an affirmative obligation on y'all to provide that 5 information.</p> <p>6 Q. You still haven't answered my question. I 7 understand that. But if Mr. Wiggins had production 8 available to him that could have been helpful, would it 9 not have been something you would have asked about?</p> <p>10 MR. WIGGINS: Objection to both the 11 assumptions that that question is based upon.</p> <p>12 BY MR. FARRIS:</p> <p>13 Q. So in this case -- and let me just ask one 14 final question.</p> <p>15 In this case then, you relied solely on the 16 data that was given to you by Dr. Wiggins?</p> <p>17 A. I relied solely on the deposition that was 18 given to me -- the data that was given to me.</p> <p>19 Q. So you relied solely on information provided to 20 you by the attorneys?</p> <p>21 A. That's right.</p> <p>22 Q. Okay.</p> <p>23 A. That's correct.</p> <p>24 Q. You mentioned something on the management 25 direction, management controls that that can lead to</p>

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1 less subjectivity; is that correct?
 2 A. I believe so, yeah.
 3 Q. Okay. So if you do have some form of
 4 management control, it takes some of the subjectivity
 5 out of the process?
 6 A. It can minimize subjectivity. If there are
 7 written policies that are adhered to, if there is record
 8 keeping that's paid attention to. Again, what I read, I
 9 saw a real lack of record keeping.
 10 Q. Okay. But some -- we talked earlier about some
 11 of the other forms of management control besides record
 12 keeping; isn't that true?
 13 A. Absolutely.
 14 Q. Okay. So there are forms of management control
 15 outside of just record keeping; correct?
 16 A. There are. There are.
 17 Q. And those other forms of management control
 18 outside of record keeping, those also could reduce
 19 subjectivity in the process?
 20 A. One would think if handled appropriately.
 21 MR. FARRIS: Okay. I don't have anything
 22 else right now, and we've got some lunch here if you
 23 want to eat and we can, you know, talk about whether we
 24 have any last questions.
 25 MR. WIGGINS: Okay.

1 not such good data. And you know, there is many other
 2 aspects to it in terms of how the data is collected.
 3 You know, when I look at some things, I look at another
 4 research study I look at, I look at how the data is
 5 collected, do I think it's good data, do I think it's
 6 data that basically gets to the point of what -- that
 7 the author of the paper is trying to make, et cetera.
 8 Q. Is part of the scientific method to collect
 9 data?
 10 A. Oh, absolutely. Absolutely.
 11 Q. How did you collect data in this case?
 12 A. I basically -- I considered the data that was
 13 sent to me by the plaintiffs' attorneys.
 14 MR. FARRIS: Okay. I don't have anything
 15 else.
 16 MR. WIGGINS: Okay. Thank you.
 17 MR. FARRIS: Are you done?
 18 MR. WIGGINS: Yeah.
 19 MR. FARRIS: Okay.
 20 VIDEOGRAPHER: Ending the deposition at
 21 12:33 p.m.
 22
 23 (DEPOSITION CONCLUDED AT 12:33 P.M.)
 24
 25

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1 VIDEOGRAPHER: Off the record at 11:52 a.m.
 2 Ending Tape 3.
 3 (Recess from 11:52 to 12:31 p.m.)
 4 VIDEOGRAPHER: On the record at 12:31 p.m.
 5 Starting Tape 4.
 6 BY MR. FARRIS:
 7 Q. Dr. Buckley, are you aware that there were some
 8 other lawsuits that were filed by Wiggins Childs against
 9 other Nucor facilities?
 10 A. You know, I was aware but didn't pay a whole
 11 lot of attention to it. It didn't have -- it wasn't
 12 concerned with me and what I was to decide.
 13 Q. Okay. Did you look at any documents, materials
 14 or anything --
 15 A. Did not.
 16 Q. -- from those cases?
 17 A. Did not.
 18 Q. Okay. What is the scientific method for
 19 studying any phenomena?
 20 A. Oh, man. You know, there's a number of
 21 different ways to describe it. Basically to me the
 22 scientific method means the -- basically the procedure
 23 of the presentation and refutation of data. Someone
 24 brings their data forward, I bring my data forward. I
 25 look at it to either say this is good data or this is

1 ORAL DEPOSITION OF
 2 MICHAEL R. BUCKLEY
 3 CHANGE/CORRECTION PAGE
 4
 5
 6

7 Please indicate changes on this
 8 sheet of paper, giving the page and line
 9 number, the change and the reason for
 10 the changes. Reason for changes
 11 are: (1) To clarify the record; (2) To
 12 conform to the facts; (3) To correct
 13 transcription errors.

11 PAGE/LINE	CORRECTION	REASON
12		
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michael buckley

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1 I, MICHAEL R. BUCKLEY, have read the foregoing
2 deposition and hereby affix my signature that same is
3 true and correct, except as noted above.
4
5
6

7 MICHAEL R. BUCKLEY
8

9 THE STATE OF _____;
10 COUNTY OF _____;

11 BEFORE ME, _____, on this day
12 personally appeared MICHAEL R. BUCKLEY, known to me to
13 be the person whose name is subscribed to the foregoing
instrument and acknowledged to me that they executed the
same for the purposes and consideration therein
expressed.
14

15 Given under my hand and seal of office this
16 day of _____, 20____.
17

18 NOTARY PUBLIC IN AND FOR
19 THE STATE OF _____
20
21
22
23
24
25

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1 REPORTER'S CERTIFICATE
2

3 I, Kevin J. Bruzewski, Certified Shorthand Reporter
in and for the State of Texas, hereby certify that the
4 foregoing testimony was given before me after the
witness, MICHAEL R. BUCKLEY, was first duly sworn.
5

6 I further certify that this deposition was prepared
by me or under my direction and is a complete and
correct transcript of the proceedings and that the
7 original is being given to
8 _____, for safekeeping and use
at trial.

9 I further certify that I am neither attorney for,
related to, nor employed by any of the parties to the
10 lawsuit in which this deposition was taken. Further, I
am neither related to nor employed by any attorney of
11 record in this cause. I do not have a financial
interest in this matter.
12

13 SUBSCRIBED AND SWORN to by me on _____,
14 20____.

15 Kevin J. Bruzewski, CSR
16 Certification No. 3727
Expires: December 31, 2007

17 Firm ID No. 62
18 Nell McCallum & Associates, Inc.
19 5300 Memorial Drive, Suite 600
Houston, Texas 77007
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23
24
25

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